


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-51/OA/2019

आदेश की तारीख / Date of Order : 19.08.2020
जारी करने की तारीख / Date of Issue : 19.08.2020

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-20/2020-21

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो क उनमें से कम से) प्रतियाँ संलग्न की जाएंगीम एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice no. VI/1(b)/CTA/Tech-47/SCN/Elite/19-20 dated 17.10.2019 issued to M/s Elite Security Services, 35/836, Gujarat Housing Board, Meghaninagar, Civil Hospital, Ahmedabad-380016.

BRIEF FACTS OF THE CASE

The facts of the case, in brief, are that M/s. Elite Security Services, 35/836, Gujarat Housing Board, Meghaninagar, Civil Hospital, Ahmedabad-3800016 [for brevity, hereinafter referred as the said assessee] were engaged in providing taxable services such as: Security/Detective Agency Services and Manpower Recruitment/Supply Agency Services etc. for which they were holding Service Tax Registration No AAEFE6162BSD001.

2. The officers of Central Tax Audit, Ahmedabad had conducted audit of the records maintained by the said assessee for the period from April 2014 to June 2017. As per the Final Audit Report No. 311/2019-20 dated 25.9.2019 issued by the Audit Commissionerate, Ahmedabad, the following objections were raised.

Rev. Para 01 : Wrongly availed exemption in respect of Security services and Manpower Supply services provided to Hostels (Chatralaya) and Schools/colleges

3. On verification of the records, it was noticed that the said assessee was providing security services and manpower supply services such as cooks, peons, sweepers, Drivers, gardeners, etc., to various residential schools and hostels (chatralaya) governed by the Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation) and also to Private/Government schools and colleges. In both the cases the assessee was availing the benefit of exemption under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012, as amended by Notification No. 6/2014-ST dated 11.07.2014.

4.1 Vide Notification No. 6/2014-ST dated 11.07.2014, which amends Mega Exemption Notification No. 25/2012-ST dated 20.6.2012, SI No. 9 has been substituted, to read as under:-

- "9. *Services provided,-*
- (a) *by an educational institution to its students, faculty and staff;*
 - (b) *to an educational institution, by way of,-*
 - (i) *transportation of students, faculty and staff;*
 - (ii) *catering, including any mid-day meals scheme sponsored by the Government;*
 - (iii) *security or cleaning or house-keeping services performed in such educational institution;*
 - (iv) *services relating to admission to, or conduct of examination by, such institution."*

4.2 Till 13.5.2016, *services by way of - (i) pre-school education and education up to higher secondary school or equivalent; (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force; (iii) education as a part of an approved vocational education course, was not leviable to service tax under clause (l) of the*

Negative List of Services provided in Section 66D of the Act. Subsequently, vide Notification No. 9/2016-ST dated 1.3.2016, the term '*Educational institution*' has been defined in para 2(oa) of Mega Exemption Notification No 25/2012-ST dated 20.6.2012, effective from 1.4.2016, as under :-

"2(oa) "*Educational Institution*" means an institute providing services by way of:

- (i) *Pre-school education and education up to higher secondary school or equivalent;*
- (ii) *Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;*
- (iii) *Education as a part of an approved vocational education course."*

4.3 In view of the above, following pre-requisites are necessary for availing the exemption under Sl. No. 9(b) of Mega Exemption Notification No. 25/2012-ST dated 20.6.2012.

- Institution who is receiving the services must be an educational institute as defined in para 2(oa) of the Notification No. 25/2012-ST, dated 20.06.2012.
- The following services received by an *eligible educational institution* shall be exempted from service tax -
 - (i) transportation of students, faculty and staff of the eligible educational institution;
 - (ii) catering service, including any mid-day meals scheme sponsored by the Government;
 - (iii) security or cleaning or house-keeping services in such educational institutions;
 - (iv) services relating to admission to such institutions or conduct of examinations.

4.4 Further, the Central Government issued Notification No.10/2017-ST dated 08.03.2017 wherein clause 9(b) of the Notification No. 25/2012-ST dated 20.6.2012 has been amended to curtail the exemption w.e.f. 01.4.2017. The following proviso has been added –

"Provided that nothing contained in clause(b) of this entry shall apply to an educational institution other than an institution providing services by way of pre-school education and education upto higher education up to higher secondary school or equivalent"

5. Hence, for the period under audit the services provided by an educational institution to its students, faculty and staff, were exempt from Service Tax. However, exemptions to services provided to educational institutions have been limited only to the scope specified in Entry No. 9(b) of Mega Exemption Notification No.25/2012-ST as amended. Such exempted services provided to educational institutions defined under para 2(oa) of the Notification *ibid* includes services like transport facility to students, faculty and staff, catering including mid-day meals scheme, security services, cleaning or housekeeping services and services relating to admission or conduct of examination.

6. In the present case, the assessee has provided security services and manpower supply services to hostels/residential schools governed by the Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation) and also to Private/Government schools and colleges.

7.1 It appears that in residential schools governed by the Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation) and in Private/Government schools and colleges, pre-school education and education up to higher secondary school or equivalent; education as part of a curriculum for obtaining the qualification recognized by any law for the time being in force; and education as a part of an approved vocational education course, is imparted. Hence such residential schools, Private/Government schools and colleges are eligible educational institutions as per para 2(oa) of the Notification No. 25/2012-ST, dated 20.06.2012, and subsequently the services provided to such institutions which are listed under Sl. No. 9(b)(i) to (iv) of the Notification *ibid* would be eligible for exemption from service tax. Therefore, it appears that Security services listed under Sl. No. 9(b)(iii), provided by the assessee to residential schools and private/government schools/colleges, would be admissible for the purpose of exemption under the Notification *ibid*. The taxable value of Security services, admissible to the assessee, has been worked out separately as per Annexure-A (residential schools governed by the Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation)) & Annexure-B (Private/Government schools and colleges) to the show-cause-notice issued in the case.

7.2 Further, the assessee has also provided security services to hostels which are governed by the Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation). It appears that the security services provided to hostels, wherein students reside and where no education is imparted, is not eligible for exemption under Sl. No. 9(b) of the Notification No. 25/2012-ST, dated 20.06.2012. This is so because such hostels are not exempted educational institutions as defined in para 2(oa) of the Notification *ibid*.

8.1 Apart from the Security services, the assessee has also provided manpower supply services such as peons, gardeners, drivers, cooks, sweepers etc. to hostels/residential schools governed by the Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation) and Private/Government schools and colleges. The assessee has charged the hostels/residential schools, Private/Government schools/colleges on the basis of man-days for which such manpower is supplied. It appears that the assessee has entered into a contract with such hostels/residential schools/Private/Government schools/colleges and supplies labour as per their requirement.

8.2 In this context, Rule 2(g) of Service Tax Rules, 1994 defines *supply of manpower* to mean :-

“supply of manpower temporarily or otherwise to another person to work under his superintendence or control”

8.3. Thus the essence of manpower supply service is that the service provider is responsible only for supply of manpower. The manpower will work under the supervision and control of the service receiver. In this particular instance, it appears that the assessee has supplied the manpower to the service recipients, viz., hostels/residential schools governed by the Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation) and Private/Government schools and colleges and has charged them for the labour provided on man-day basis or man-hours basis. Hence such manpower supply services are different from cleaning or housekeeping services. The exemption under Sl. No.9(b)(iii) of Notification No. 25/2012-ST dated 20.6.2012, as amended, has been provided only to cleaning and housekeeping services. In case of cleaning or housekeeping services, the service tax is leviable on the gross amount charged for such services and such services are undertaken under written or unwritten contracts. The labour which is used for the purpose of providing cleaning/housekeeping services also works under the superintendence and control of the service provider and not the service receiver. Hence, it appears that the services provided by the assessee are manpower supply services and not cleaning or housekeeping services and such Manpower supply services of peons, gardeners, drivers, cooks, sweepers etc., would not be eligible for exemption under Sl No. 9(b)(iii) of Notification No. 25/2012-ST dated 20.06.2012, as amended. Therefore, it appears that the assessee is liable to discharge service tax at the applicable rate as per Section 66B of the Act on the manpower supply services provided to hostels/residential schools governed by the Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation) and also Private/Government schools/colleges.

9. It appeared from the aforesaid discussions that hostels, as they are places for residence and lodging, would not fall within the scope of an *educational institution* as defined in para 2(oa) of the Notification No. 25/2012-ST, dated 20.06.2012. Hence, it appears that the security services and manpower supply services related to supply of cooks, peons, sweepers, etc. provided to the hostels, would be ineligible for the exemption under Notification No 25/2012-ST dated 20.6.2012, as amended. Similarly, manpower supply services provided to hostels/residential schools governed by the Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation) and also Private/Government schools and colleges, would not be eligible for exemption under the Notification No. 25/2012-ST dated 20.06.2012, as such services are not listed under Sl.No. 9(b)(iii) of the said Notification.

10. The details of the ineligible exemption in respect of Security services provided to hostels and Manpower supply services provided to hostels/Residential Schools and Private /Government Schools and colleges is worked out as under:

Year	Total value of Security and Manpower supply Services provided to		Admissible Exemption For Security Services provided to		Gross Taxable value of Manpower Supply to Adijati Res. Schools.pvt/govt schools/colleges and security Services to Hostels	Taxable value as per Sec. 67(2) of the Finance Act	Service Tax payable
	Adijati schools & Hostels	School. ITI College. UNI	Adijati Resi. Schools (Ann.A)	Pvt/govt School. ITI College. Univ. (Ann.B)			
1	2	3	4	5	6 = (2+3) - (4+5)	7	8
2014-15	37473895	17325197	6286409	8529180	39983503	35585175	4398328
2015-16	48567207	19327097	6958553	9647923	51287828	44989323	6298505
2016-17	66271786	20161241	7634233	6577686	72221108	62800963	9420145
2017-18 (6/2017)	11817381	3012788	1565170	593046	12671953	11019090	1652863
Total					176164392	154394551	21769841

11. The term 'service' is defined in clause (44) of Section 65B of the Act, as any activity carried out by a person for another for a consideration, and includes a declared service. Thus, any activity provided by one person to another in return for a consideration would constitute service. It, therefore, appears that security services and manpower supply services, when carried out by a person for another, for consideration, would amount to provision of service, which would be taxable. The activities of security services and manpower supply services are also not covered under clauses (a) to (q) of the Negative List specified in Section 66D of the Act and are, therefore taxable services. Moreover, such security services provided to hostels and manpower supply services provided to hostels/residential schools, Private/ Government schools and colleges are also not covered under the Mega Exemption Notification No.25/2012-ST dated 20.6.2012. It, therefore, appeared that by providing security service to hostels of Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation) and manpower supply services to hostels/residential schools and Private/Government schools and colleges for a consideration, the assessee has provided services leviable to service tax under Section 66B. Accordingly, service tax shall be payable on the value recovered for provision of such services.

12. The value of taxable services is required to be determined as per the provisions of section 67 of the Act, which provides that where the service tax is payable on value, such value shall be the gross amount charged by the service provider for such services provided or to be provided. Therefore, the gross amount charged as determined under section 67 will form part of value of taxable service. Further, Section 67(2) of the Act provides that where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of

service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

13. The taxable value of security services provided by the assessee to hostels and manpower supply services provided to hostels/residential schools and Private/Government schools and colleges, received by them are given below which indicates that the said assessee failed to discharge a service liability of Rs. 2,17,69,841/-

Year	Adijati Hostels (Manpower supply and Security services)	Adijati Residential Schools (Manpower Supply Services)	Private/Govt Schools and Colleges (Manpower Supply Services)	Gross Taxable value of Manpower supply and Security services	Taxable value as per Sec. 67(2) of the Finance Act	Service Tax payable
2014-15	25995202	5192284	8796017	39983503	35585175	4398328
2015-16	32574561	9034093	9679174	51287828	44989323	6298505
2016-17	49406360	9231193	13583555	72221108	62800963	9420145
2017-18 (6/2017)	8592544	1659667	2419742	12671953	11019090	1652863
	116568667	25117237	34478488	176164392	154394551	21769841

14. It, therefore, appeared that the said assessee has contravened the provisions/conditions of:-

- (i) Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 ('Rules') as they have failed to pay service tax at the rate specified in section 66B in such manner and within such period as may be prescribed;
- (ii) Section 70 of the Act read with Rule 7 of the Rules as they have failed to assess their tax liability properly and also failed to file proper and correct ST-3 returns;
- (iii) Notification No 25/2012-ST dated 20.6.2012, as amended as they have wrongly claimed exemption under Sr No 9(b)(iii) of the notification *ibid*.

15 It appeared that the assessee has willfully and wrongfully claimed exemption under Mega Exemption Notification No. 25/2012-ST dated 20.6.2012, and suppressed the value of taxable services in the ST-3 returns filed by them. They failed to intimate the department that they were providing taxable services, as per Section 65B(44) of the Act read with Section 65B(51) of the Act, before the audit objection was detected. It, therefore, appears that they have willfully mis-stated and suppressed the material facts with intent to evade the payment of service tax. Therefore, it appeared that the unpaid service tax of Rs. 2,17,69,841/- is required to be demanded and recovered from the assessee under the proviso to Section 73(1) of the Act along with interest under Section 75 of the Act. By wrongfully claiming exemption under Notification No. 25/2012-ST dated 20.6.2012 as amended and by the acts of

contravention of the Act and the Rules made thereunder, the assessee has also rendered themselves liable to penalty under the provisions of Section 78(1) of the Act.

Rev. Para-2 : Wrong availment of benefit under exemption Notification No. 25/2012 dated 20.6.2012

16. On scrutiny of the Invoices, Manual registers and invoice-wise details submitted by the assessee for the period 2014-15 to 2017-18 (upto June 2017), it was noticed that the assessee had provided security services to various Government Hospitals/dispensaries and other units/panchayats and collectorates but failed to discharge the Service Tax liability on the taxable value of such Security services by claiming exemption under Notification No. 25/2012-ST dated 20.6.2012 as shown below (details as per Annexure-C to the SCN) :

Year	Gross value of services to hospital /govt. dispensary	Gross value of Services for Road work	Gross value of Services to Other units	Gross value of Services to Jilla panchayat Navsari/ Patan	Gross value of Services to Collector Ahwa/ Dang/ Valsad	Gross total Value	Taxable Value as per Section 67(2) of the Act	Service Tax Payable
2014-15	6679646	2310717	13064368	2998300	3462313	28515344	25378555	3136789
2015-16	8274907	2049258	7786100	397539	8473030	26980834	23667398	3313436
2016-17	6177655	2847169	0	0	35058249	44083073	38333107	5749966
2017-18 (Jun/17)	0	1511612	0	0	0	1511612	1314445	197167
					Total	101090863	88693505	12397358

17. The term 'service' is defined in clause (44) of Section 65B of the Finance Act, 1994 as any activity carried out by a person for another for consideration, and includes a declared service. Thus, any activity provided by a person to another in return for a consideration would amount to provision of service, which would be taxable. It appears that the activity of security services have been provided by the assessee to various government hospitals/dispensaries, for road work, to other units and to Jilla Panchayats and Collectorates, Ahwa/Dang/Valsad. The activity of security services are also not covered under clauses (a) to (q) of the Negative List specified in Section 66D of the Act and are, therefore taxable services. Such security services are also not covered under the Mega Exemption Notification No. 25/2012-ST dated 20.6.2012 as amended. Therefore, it appears that such security services provided by the assessee to various service recipients would fall within the ambit of service as defined under Section 65B (44) of the Act and the consideration received by them from such service recipients, appears to be liable to Service tax in terms of Section 66B of the Act.

18. As per Section 66B of the Finance Act, 1994, there shall be levied a tax at the rate of fourteen per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another

and collected in such manner as may be prescribed. Taxable service is defined under section 65B(51) of Finance Act, 1994 as any service on which service tax is leviable under Section 66B. Section 67(i) of the Act *ibid* provides that where service tax is chargeable on any taxable service with reference to its value, then such value, in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him. Further, Section 67(2) of the Act provides that where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged. Thus, it appears from the above Table that the assessee has failed to discharge service tax liability of Rs. 1,23,97,358/- on the taxable value of security services, provided to various government hospitals/dispensaries, for road work, to other units and to Jilla Panchayats and to Collectorates, Ahwa/Dang/Valsad.

19. It appears that the assessee has contravened the provisions/conditions of:
- (i) Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 ('Rules') as they have failed to pay service tax at the rate specified in section 66B in such manner and within such period as may be prescribed;
 - (ii) Section 70 of the Act read with Rule 7 of the Rules as they have failed to assess their tax liability properly and also file correct ST-3 returns;
 - (iii) Notification No 25/2012-ST dated 20.6.2012, as amended as they have wrongly claimed the exemption under the Notfn *ibid*.

20. It appears that the assessee was fully aware that the exemption under Mega Exemption Notification No. 25/2012-ST dated 20.6.2012 was not availed to security services and that such services were liable to service tax. It, therefore, appears that the assessee has willfully and wrongfully claimed wrong benefit of exemption under Mega Exemption Notification No. 25/2012-ST dated 20.6.2012, against security services provided to various government hospitals/dispensaries, for road work, to other units and to Jilla Panchayats and to Collectorates, Ahwa/Dang/Valsad. They have willfully mis-stated and suppressed the material facts with intent to evade the payment of service tax. Accordingly, the proviso to Section 73(1) of the Act is applicable for invoking the extended period of 'five years' for recovery of unpaid service tax amounting to Rs. 1,23,97,358/- from the assessee. As the said assessee has not paid the service tax, interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Act. It appears by wrongly claiming exemption under Notification No. 25/2012-ST dated 20.6.2012 as amended and by willfully mis-stating the facts that they were

providing security services to exempted educational institutions, the assessee had an intention to evade the payment of service tax, and therefore, it appears that the assessee would also be liable for penal action under the provisions of Sections 78(1) of the Act.

Rev. Para 3: Wrong availment of benefit of Notification No.30/2012-ST dated 20.6.2012 as amended by Notification No.07/2015-ST.

21. During audit, on reconciliation of the Taxable value of ST-3 returns *vis-à-vis* the registers and detailed excel sheets submitted by the assessee, it was observed that the assessee has provided security services on which they have discharged service tax liability under Reverse Charge Mechanism under Notification No. 30/2012-ST dated 20.6.2012, as amended. It was also noticed that such security services have been provided by the assessee to government bodies/undertakings, viz. Water and Land Management Institute, Anand, Surat R & B division, Rajkot Municipal Corporation, Anand Irrigation division etc., as well as business entities registered as body corporates.

22.1 By exercising the powers under sub-section (2) of Section 68 of the Finance Act, 1994, the Government has issued Notification No. 30/2012-ST dated 20.6.2012, as amended, wherein the class of services under the reverse charge mechanism; the person liable to pay service tax; and the extent of service tax payable by such person, has been specified. The person liable to pay service tax in respect of taxable services notified under sub-section (2) of Section 68 of the Act has been stipulated under Rule 2(1)(d) of the Service Tax Rules, 1994. As per Notification 30/2012-ST dated 20.06.2012, in relation to any taxable service provided or agreed to be provided by way of security services by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory, the recipient of such service will be liable to pay 100% service tax. The assessee is a Partnership firm and has provided security services to government bodies/undertakings besides, body corporates.

22.2. The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified at Para (I), Clause (A), sub-clause (v) to Notification No.30/2012- ST as amended by Notification No. 45/2012-ST has been specified at the Table at Para (II) of the said Notification and the relevant portion is reproduced as under:

Sl. No	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
8	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose [or security services] [Notification No. 45/2012-ST, dated 7-8- 2012 inserted the words or security services]	NIL [Substituted for "25%" by Notification No. 7/2015-ST, dated 1-3-2015 w.e.f.1-4-2015.]	100 % [Substituted for "75%" by Notification No.7/2015-ST, dated 1-3-2015 w.e.f.1-4-2015]

22.3. The person liable to pay service tax under the reverse mechanism charge has also been stipulated under Rule 2(1)(d) of the Service Tax Rules, 1994 which reads as under

"2(d) "person liable for paying service tax", -

(i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-

(A) -----

(B) -----

(F) in relation to service provided or agreed to be provided by way of

(a)..

(b) supply of manpower for any purpose or [security service];

by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory, both the service provider and the service recipient to the extent notified under sub-section (2) of section 68 of the Act, for each respectively

22.4. The above provisions makes it clear that the necessity to discharge service tax liability under Reverse Charge Mechanism arises only if the service is provided by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, and *the said service is received by a business entity registered as a body corporate*. In all other cases, the liability to discharged service tax would lie on the service provider.

23.1. In the present instance, it is noticed that security services have been provided by the assessee to government bodies /undertakings and also body corporates. In relation to taxable services provided or agreed to be provided by way of security services, by the assessee to a business entity registered as a body corporate, the recipient will be liable to pay 100% service tax. This amendment was effective w.e.f 01.04.2015 vide Notification No. 7/2015-ST dated 1.3.2015. Prior to that the recipient was liable to pay 75% of the service tax and the remaining 25% was liable to be paid by the service provider. It is noticed that in the case of services provided to body corporates, the assessee has discharged the service tax liability as a service provider, for the period prior to 01.04.2015. After 01.04.2015, the service recipient was liable to discharge 100% service tax.

23.2 It is further noticed that the assessee has provided security services to government bodies/undertakings and has not discharged service tax liability on such services. As already discussed above, in case of security services provided to government bodies/undertakings, which are entities other than body corporates, the respective service provider will be liable to discharge service tax on such services. Hence, it appears that the assessee is liable to discharge service tax on security services provided to government bodies/undertakings, on which no full/partial reverse charge mechanism is applicable.

24. On reconciliation of the ST-3 returns with the registers detailed excel sheets provided by the assessee, for the period from April 2014 to June 2017, it appeared that the said assessee had failed to pay service tax liability of Rs. 36,02,622/- on security services provided to government bodies/undertakings as tabulated below: -

Year	Gross Value shown as "ST paid Bills" in the Excel Sheet based on Register (Body Corp. and Govt. Body)	Taxable value on RCM admissible in r/o of Body corporate (As per Annex. D)	Taxable value to be paid in r/o Govt. body /undertakings not admissible	Taxable value as per ST3 returns	Difference	Taxable Value under Section 67(2) of the Act	Service Tax Payable
	(i)	(ii)	(iii) [(i)-(ii)]	(iv)	(v) =[(iii)-(iv)]		
2014-15	24980499	7987336	16993163	6478107	10515056	9358362	1156694
2014-15	1849293	1386970	462323	0	462323	462323	57143
2015-16	32940916	3111102	29829814	28365739	1464075	1284276	179799
2016-17	38561681	186689	38374992	24667431	13707561	11919618	1787943
2017-18 (6/17)	16584436	42939	16541497	13313490	3228007	2806963	421044
Total						25831542	3602622

25. The activity of security services provided by the assessee to government bodies/undertakings are not covered under clauses (a) to (q) of the Negative List specified in Section 66D of the Act and are, therefore taxable services. Such security services are also not covered under the Mega Exemption Notification No. 25/2012-ST dated 20.6.2012 as amended. Therefore, it appears that such security services provided by the assessee to government bodies/undertakings would fall within the ambit of *service* as defined under Section 65B (44) of the Act and the consideration received by them from such service recipients, appears to be liable to Service tax in terms of Section 66B of the Act. It therefore, appears that the assessee is liable to pay service tax of Rs.36,02,622/- as shown in above Table, on the taxable value of Security Services provided by them to government bodies/undertakings during the period April 2014 to June 2017.

26. It appears that the assessee has contravened the provisions/conditions of: -

- (i) Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 ('Rules') as they have failed to pay service tax at the rate specified in section 66B in such manner and within such period as may be prescribed;
- (ii) Section 70 of the Act read with Rule 7 of the Rules as they have failed to assess their tax liability properly and also file correct ST-3 returns;

- (iii) Notification No 30/2012-ST dated 20.6.2012, as amended as they have failed to discharge their service tax liability on security services provided to government bodies/undertakings.

27 It appeared that the assessee has suppressed the fact of providing security services to government bodies/undertakings, on which they were liable to discharge service tax under forward charge, from the department with intent to evade payment of service tax. It therefore appeared that the unpaid service tax of Rs. 36,02,622/- is liable to be demanded and recovered from the assessee under the proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Act, *ibid*. It also appeared that by the act of not disclosing the correct taxable value of Security services provided by them in the ST-3 returns the assessee is also liable for penal action under the provisions of Sections 78(1) of the Act, *ibid*.

28 Audit officers had issued a Query Memo to the said assessee vide F. No.VI/1(b)-35/IA/Cir-V/Gr-30/17-18 dtd.19.07.2019, requesting them to clarify their stand. The assessee, vide letter dated 25.07.2019, requested for further time to submit their reply. The assessee was also required to obtain photocopies of required documents from the audit office under letter dated 31.07.2019, but the assessee did not reply.

29. In this era of self-assessment, a manufacturer/service provider is not required to maintain any statutory or separate records under the provisions of the Finance Act and Rules made thereunder and private records maintained by them, for normal business purposes, are accepted. Therefore, the governing statutory provisions create an absolute liability when any provision is contravened. From the evidences, it appears that the assessee has knowingly and deliberated mis-utilised the benefit of exemption under Notification No. 25/2012-ST dated 30.6.2012 as well as the benefit of partial/full payment of service tax under reverse charge mechanism as provided under Notification No.30/2012-ST dated 20.6.2012. It appeared that the assessee was fully aware that they were not eligible for exemption on security services and manpower supply services provided to ineligible educational institutions. They were also aware that they were liable to discharge service tax liability on security services provided to government hospitals/dispensaries, road work, and services provided to units and Jilla panchayats, Navasari and Patan and to the Collectorates Ahwa/Dang/Valsad. Further, they were aware that only services provided to body corporates would be eligible for payment of service tax under Reverse Charge Mechanism under Notification No. 30/2012-ST dated 20.6.2012. The wrong availment of exemption/non-payment of service tax would have remained undetected if audit had not been conducted and the preventive section had not retrieved the records from the assessee. The deliberate and willful mis-statement of facts appears to have been committed by the assessee with an intent to evade the payment of service tax. Therefore, unpaid service tax

amounting to Rs. 3,77,69,821/- (*total involved in Rev. Paras 01, 02 and 03*) is liable to demanded and recovered from the assessee under the proviso to Section 73(1) of the Act along with interest under Section 75 of the Act. Moreover, in the present regime of liberalization, self-assessment and filing of returns online, no documents whatsoever are submitted by the assessee to the department and therefore, the department would only come to know about such non-payment of service tax during audit or preventive/other checks. All the above mentioned acts of contravention of the provisions of the Finance Act, 1994 on the part of the assessee have been committed with an intent to evade the payment of service tax and they, therefore, have rendered themselves liable to penalty under the provisions of Section 78(1) of the Act.

30.1 Pre-Show Cause Notice consultation for Litigation Management and Dispute Resolution, in terms of instructions issued from File No 1080/09/DLA/MISC/15 dated 21.12.2015, F.No. 1080/DLA/CC Conference/2016 dated 13.10.2016 and Master Circular No. 1053/02/2017-CX dated 10.03.2017, was granted on 14.10.2019 before the Principal Commissioner, Central Tax Audit, Ahmedabad. Shri A.K. Singh, Partner, Shri Ram Naresh Thakur, Partner and Shri Rajendra Patel, C.A. attended the pre-SCN consultation and vide letter dated 14.10.2019, they submitted that they provide services to only Gujarat Tribal Development Corporation and have been awarded contracts for providing security services and supply of manpower services to various residential schools and hostels. They stated that they are eligible for exemption under Sl.No. 9(b) of Notification No. 25/2012-ST dated 20.6.2012, as transportation facilities cannot be provided without a driver, cleaning by staff of indoor and outdoor campuses needs manpower to maintain the campus. It is also stated that while Audit has allowed exemption in respect of integrated campuses which includes both schools and hostels together, exemption has been denied to hostels which are located in different locations away from the schools. They sought more time to reply to the other two queries raised by Audit.

30.2. The contentions of the assessee cannot be accepted as already discussed in the foregoing paras. Hostels are places for residence and lodging, and would not fall within the scope of an *educational institution* as defined in para 2(oa) of the Notification No. 25/2012-ST, dated 20.06.2012. Hence, security services and manpower supply services like cooks, peons, sweepers, etc., provided to the hostels, would be ineligible for the exemption under the Notification *ibid*. The residential schools governed by the Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation) and Private/Government schools/colleges are eligible educational institutions as per Para 2(oa) of the Notification No. 25/2012-ST, dated 20.06.2012, and subsequently the security services provided to such institutions have been allowed the benefit of exemption from service tax. The assessee has sought time to reply to the other two queries raised by Audit, but it appeared that the last date for issuance of the Show Cause Notice as per the provisions contained in Section 73(6)(i)(a)

was 18.10.2019 as the Half-Yearly ST-3 Return for the period April-September 2014 was filed on 19.10.2014 and any delay would jeopardize the interests of the revenue.

31 Therefore, a show-cause-notice F.No. VI/1(b)/CTA/Tech-47/SCN/Elite/19-20 dated 17.10.2019 was issued to the said M/s. Elite Security Services, Ahmedabad by the Principal Commissioner of Central Tax, Audit, Ahmedabad calling upon them to show cause to the Principal Commissioner/Commissioner of CGST, Ahmedabad-North as to why: -

(i) The benefit of exemption under Notification No. 25/2012-ST dated 20.6.2012 as amended, on security services provided to hostels; manpower supply services provided to hostels/residential schools and Private/Government schools/colleges, and on security services provided to various government hospitals/dispensaries, for road work, other units and to Jilla Panchayats and to Collectors Ahwa/Dang/Valsad, should not be denied to them;

(ii) Unpaid service tax amounting to Rs 3,41,67,199/- (as per Rev. Paras 01 and 02) should not be demanded and recovered from them, under the proviso to section 73(1) of the Finance Act, 1994;

(iii) Unpaid service tax of Rs. 36,02,622/- (as per Rev. Para-3) should not be demanded and recovered from them under forward charge, by denying the liability to pay under reverse charge mechanism under Notification No.30/2012-ST dated 20.6.2012, to services provided to government bodies/undertakings;

(iv) Interest should not be charged and recovered from them under the provisions of Section 75 of the Finance Act, 1994 on the demand at (ii) & (iii) above;

(v) Penalty should not be imposed on them under the provisions of Section 78(1) of the Finance Act, 1994 on the demand at (ii) & (iii) above

DEFENCE REPLY & PERSONAL HEARING

32. The said assessee, vide their letter dated 13.11.2019 stated that their services are exempted, nevertheless the SCN was issued due to mis-representation of the facts etc. and hence they need more time to present their case after proper study and preparation. However, due to non-receipt of any reply or submission from their part even after several months, a letter dated 28.07.2020 was sent to the said assessee offering them a personal hearing on 07.08.2020 or alternatively on 13.08.2020. Accordingly, Shri Rajan K. Patel, Chartered Accountant appeared on behalf of the said assessee for personal hearing on 07.08.2020. He submitted a detailed submission dated 07.07.2020 by refuting all the allegations contained in the SCN dated

17.10.2019. He explained that the SCN would not stand the test of law on merits as well as on time bar in the light of settled principles of law as interpreted by various judicial authorities. He also submitted copies of judgments as cited in the defence reply, and requested to drop the demand and vacate the SCN.

33. Vide their submission dated 07.07.2020 filed during the personal hearing, the said assessee inter alia stated that they deny the averments and allegations made in the subject SCN regarding contravention of any provisions of the Finance Act, 1994 or the rules or notifications issued thereunder, deliberately or otherwise, which resulted in any non-payment or short-payment of service tax, that warrants any demand or recovery of such tax with or without any interest, or that calls for any imposition of penalty on our firm under the provisions of the said law; and that the subject show cause notice is not based on any actual facts nor it contains any proper interpretation of the law but instead, the same has been framed upon mere fictions and fancies of the audit officers with no legal substance. Therefore, they requested to consider the following facts and explanations and drop the proceedings initiated under the subject notice *in limine* without causing any undue injury.

34. They stated that M/s Elite Security Services is a partnership firm, engaged in providing Security/Detective Agency Service, Manpower Recruitment/Supply Agency Service, Housekeeping Service, etc. to various reputed clients, including a number of Government Departments, Local Government Services, Hospitals, Educational Institutions, etc. since several years; that they have been holding valid Service Tax Registration No. AAEFE6162BSD001 in terms of the provisions of Section 69 of the Finance Act, 1994 and paying service tax at the appropriate rates after availing the benefit of exemption, if any, provided under the statute; that they have been filing necessary periodical documents, returns and other information to the department without any default; that there is not even a remote allegation against them for not issuing any taxable invoices showing all particulars of value charged from their clients, and in fact, the SCN itself state and confirm that they have been issuing taxable invoices, claiming exemption notification and filing periodical ST-3 returns; and that without prejudice to anything that is stated or admitted in the succeeding paras, they submitted that the subject SCN is hit by limitation of time bar, and hence the same is illegal and *ab initio* void. They argued that the audit period involved is April, 2014 and June-2017 and the SCN was issued on 17.10.2019; that when substantial tax compliance has been done by them on all aspects of their business activities, including issuance of taxable invoices, filing all periodical returns and submission of each and every information sought for by the authorities from time to time, there is no question of any mis-declaration, wilful suppression, mis-statement, etc on their part with even any remote intent to evade any tax; that the subject SCN cannot sustain before the law and hence needs to be dropped *per se*; that the officers of Central Tax Audit had conducted audit of the documents and records maintained by them during the period from FY 2014-15 to FY 2017-18

(Till June, 2017) and had issued FAR No. 311/2019-20 which finally resulted in issuance of the subject show cause notice; and that since the FAR and the SCN contains different issues based on which the total demand of service tax as per the subject notice has been bifurcated, they would file their defence reply separately in respect of each such issue, as discussed in the succeeding paragraphs for your consideration. However, they reiterated for records that the following submissions are made by them without prejudice to the fact that the entire demand is time-barred and cannot sustain in the eyes of the law.

35. *Rev.Para-1: Allegation regarding wrong availment of exemption in respect of the services provided to educational schools, colleges, hostels (chatralayas) etc.:* The said assessee stated that they have been providing their services, viz. Security Agency Service, Manpower Supply Service (supplying personnel such as cooks, gardeners, sweepers, peons, drivers, etc.) to various residential schools and hostels run by the Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Corporation), besides to various other private schools and colleges during the audit period from FY 2014-15 to FY 2017-18 (Till June, 2017). Since all such services provided to Educational Institutions were exempted from service tax in terms of the provisions of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 as amended, they were claiming such exemption and not paying service tax on the gross amounts received from their clients towards provision of such services. They stated that it is vital to mention here that they have declared each and every information regarding their availment of such exemption while filing the periodical returns during the period under review; that in fact, the audit officers have worked out the value of such taxable services from the invoices and periodical returns submitted before them and therefore, as already stated above, the demand on this issue is totally time-barred; and that even once the assessing officers or any other authorities have raised any questions regarding inadmissibility of such exemption to them and even the audit report does not dispute this facts.

36. They further stated that, notwithstanding the SCN hit by time-bar, the limited question that requires determination with reference to this revenue para is whether they are eligible for exemption in respect of the security agency services and housekeeping services provided by us to various educational institutions, residential schools, hostels, etc. by way of supplying security guards, cooks, gardeners, sweepers, peons, drivers, etc. for their day-to-day operational activities; that the show cause notice cites Sl. No. 9(b) read with the definition given under Para 2(oa) of mega exemption Notification No. 25/2012-ST dated 20.06.2012, to make a mischievous distinction between such services (security services and housekeeping services) provided by us to different type of educational institutions to arbitrarily deny exemption to some of such services while allowing to some; that the department states that have correctly availed exemption on Security Agency Services rendered by to residential schools governed by Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas

Corporation) and to Private/Government schools and colleges where pre-school education and education upto higher secondary level or equivalent, education as a part of curriculum for obtaining a qualification that is recognized by any law for the time being in force, and education as a part of an approved vocational education course, is imparted; that the show cause notice confirms in Para 8.1 that such services rendered to residential schools, private/Government schools and colleges are "eligible educational institutions" as per Para 2(oa) of Notification No. 25/2012-ST dated 20.06.2012, and therefore the services provided by us to such institutions which are listed under Sl. No. 9(b)(i) to (iv) of the notification will be eligible for exemption from service tax; and that there is no dispute to the exemption to Security Services provided by them to residential schools and private/Government schools, colleges, etc. on the ground that such security service is specified under Sl. No. 9(b)(iii) of Notification No. 25/2012-ST.

37. They stated that in contrast to the above, Para 8.2 of the show cause notice seeks to deny exemption as per Sl. No. 9(b) of the said Notification No. 25/2012-ST, to the same type of Security Services which were also provided by the said assessee to the hostels governed by Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation), on the ground that such security services are provided to hostels, wherein students reside, and where no education is imparted, and that such hostels cannot be considered as 'exempted educational institutions' in terms of Para 2(oa) of the said Notification No. 25/2012-ST; that the show cause notice categorically admits in Para 8.2 that these hostels are also where students reside and thus the only ground for seeking denial of exemption is that these hostels are not located or functioning from within the same campus where education is also imparted to the same students; that Para 37.1 of the SCN which speaks about pre-consultation procedures also clearly indicate that while exemption has been allowed in respect of integrated hostels, such exemption is sought to be denied to the other hostels only on the ground that the same is located at a different location where the corresponding school is located; that Para 9.1 of the show cause notice charts out yet another interpretation to deny exemption to the housekeeping services provided by them to hostels and residential schools governed by Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation) and private/Government schools and colleges; that such housekeeping services provided by them to various educational institutions, residential schools, hostels, etc. includes supply of manpower/personnel as cooks, gardeners, sweepers, peons, drivers, etc. for their day-to-day operational activities; that the allegations are that they have charged the hostels/residential schools, private/Government schools, colleges etc. on the basis of man-days for such manpower is supplied; and that we have entered into a contract with hostels/residential schools, private/Government schools/colleges and supply labour as per their requirement. Thus, in short, the dispute is only with regard to two issues: (i) Security Services provided by them to the hostels, where students reside, which are governed by Gujarat Tribal Development Corporation

for Scheduled Tribes (Adijati Vikas Corporation) and are located outside the campus where education is imparted to such students; and (ii) housekeeping services provided by them to various educational institutions, residential schools, hostels, etc. by way of supply of manpower/personnel as cooks, gardeners, sweepers, peons, drivers, etc. for their day-to-day operational activities; and that before venturing into the eligibility of exemption or otherwise, they desired to bring on record certain facts regarding the status and facilities provided by the aforesaid types of hostels and institutions.

38 The said assessee further claimed that the SCNs admitted that these hostels are places where students reside and service tax exemption is sought to be denied only on the ground that since no education is imparted within these hostels, such hostels cannot be considered as educational institutions for the purpose of Not. No. 25/2012-ST. In this connection, they invited attention to the various educational activities carried out by the Gujarat Tribal Development Department exclusively for the educational upliftment of tribal children from the State. Out of the various innovative schemes implemented by the State Govt., residential schools (Low Literacy Girls Residential Schools – LLGRS, Adarsh Nivasi Shalas and Ashram Shalas) and hostels (Samras hostels and Grant-in-Aid hostels) are two important projects on educational activities of tribal children. Eklavya Girls Residential Schools (EGRS) are the residential schools exclusively for tribal girls and are running across ten districts of the State under the scheme of strengthening education among ST girls. All these residential schools offer residential facilities and schooling opportunities to tribal students. Further, State has set up total 44 Adarsh Nivasi Shalas with a view to facilitate education of tribal students beyond primary level, where more than 5600 tribal children have been enrolled with free education, boarding, lodging, clothing etc. are provided. Similarly, State has more than 500 Ashram Shalas where tribal children from very poor families are accommodated to provide education, boarding, lodging, etc. Similarly, Samras Hostels and Grant-in-Aid hostels are also set up the State Government in all the districts with the sole purpose of facilitating education among the tribal children. While there are more than 950 GIA hostels located in almost all districts in the state with more 50000 seats, Samras Hostels are located in major cities/towns with intended capacity of 12000 students. They stated that all these details are available in the official website of Gujarat Government at url: <https://tribal.gujarat.gov.in/> including the list of such hostels; that a simple surfing of the website would make it abundantly clear that not even a single of these hostels or residential schools are intended for anyone else other than the tribal students for their educational purposes; that it is also evidently clear that the charges and fees, whether charged from the students or given by the Govt. or NGOs, are not specifically separated for education and hostel facilities and similar is the status of the other private/Government colleges and hostels referred in the show cause notice; that in fact, in cases of these private/Government colleges and hostels, exemption was sought to be denied not on the ground that they are not educational institutions, but on the ground that they, as service providers, had supplied

manpower/labour supplies to them and charged for man-hours, etc.; that the SCN states that their supplies were NOT housekeeping or cleaning services to the educational institutions, but were manpower supplies to the concerned schools/hostels, etc.; and that having discussed the status and facilities provided by the residential schools and hostels governed by Gujarat Tribal Development Corporation as well as the other private/Government schools/colleges and hostels which established that all of them are involved solely and principally for educational purpose of students, they would discuss the eligibility of exemption of the aforesaid two categories of institutions in the following paras.

39. *Security Services provided to the hostels, where students reside, which are governed by Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation) and are located outside the campus where education is imparted to such students:*

- They stated that the SCN proposed to deny exemption to these services merely and solely on the ground that these hostels are not integrated with the schools but located at a different location and hence cannot be considered as educational institutions imparting education to students; and that there is no dispute that the inmates of these hostels are students of Scheduled Tribe and their education, food, accommodation, clothing, etc. are all form part of an integrated scheme administered by the State Government with none of them is separable in the nature, character or cost. They also explained the provisions of Section 66D(1) of the Finance Act and the corresponding amendments brought in Notification No. 25/2012-ST after 14.05.2016 and claimed that after such amendments, the services provided to/by educational institutions by way of auxiliary education services remain exempt; that the services provided by us to the hostels governed by Gujarat Tribal Development Corporation are covered by the aforesaid definition of "auxiliary educational services".

40. The said assessee further referred to CBEC Circular No. 172/7/2013-ST dated 19.09.2013 (F.No. B1/14/2013-TRU) which carried clarifications regarding the exemptions of service tax available and claimed that that security services and house-keeping services provided to educational institutions are fully covered under the scope of exemption, and it becomes clear that the moment they render their security agency service, or manpower/labour supplies, housekeeping or any similar services to an educational institutions, it ceases to be such independent services but form part of the education services. They also referred to the Service Tax Education Guide published by CBEC on 19.06.2012 wherein clarification on taxability on education services at Para 4.12, has been given to cover their services as bundled services so that they do not loose exemption. Therefore they argued that no service tax is leviable in their case.

41. *Housekeeping services provided by us to various educational institutions, residential schools, hostels, etc. by way of supply of manpower/personnel as cooks, gardeners,*

sweepers, peons, drivers, etc. for their day-to-day operational activities : - They further stated that although the above paras talked about the security agency services rendered by them to the hostels governed by Gujarat Tribal Development Corporation, the ratio of both the clarifications issued by the Board vide its circular dated 19.09.2013 and Education Guide dated 19.06.2012 are fully applicable for the housekeeping services rendered by them to various private/Government educational institutions, residential schools, hostels etc. as these are all considered to be auxiliary educational activities specified in the circular; that the SCN has wrongly taken an approach to deny exemption merely on the ground that they classified their output services as manpower/labour supplies, housekeeping services, etc.; and that it is not the classification of their services but the nature of services received by the recipient educational institution is what exempts such services from the purview of service tax. Thus, they argued that the SCN was issued without any authority of law and requested to consider the legality of the issue and the time-bar of the demand, and drop the proceedings.

42 *Rev.Para-2: Allegation regarding wrong availment of exemption in respect of the security services provided to Government hospitals, dispensaries, panchayats, collectorates, etc:* - In this connection, the said assessee stated that the demand is also hit by limitation of time-bar. They invited attention to Para 37.2 of the SCN which say that the SCN was issued in undue haste with the sole purpose of issuing the same within the time limit of five years provided under the law, without affording them any opportunity to explain the facts and legality of the matter; that the SCN was issued by violating all principles of natural justice and the basic rights protected by the Constitution of India; that nowhere in the SCN, it is stated as to how they have mis-declared any facts or suppressed any information with intent to evade service tax which would have invited the extended provisions of the law; and that Para-18 of the SCN shows the illegal way in which demand was made as it read: "*On scrutiny of the invoices, manual registers and invoice-wise details submitted by the assessee for the period 2014-15 to 2017-18 (upto June, 2017), it is noticed that the assessee has provided security services to various Government hospitals/dispensaries, and other units/panchayats and collectorates but have failed to discharge the service tax liability on the taxable value on such security services by claiming exemption under Notification No. 25/2012-ST dated 20.06.2012..*". They claimed that the SCN itself states that they had issued tax invoices for their services rendered to the aforesaid Government departments, hospitals etc.; that they have maintained records manual registers for such taxable services provided to such departments/establishments, etc.; that they had submitted such invoices, manual registers and invoice wise details of all taxable services when required by the audit officers; and that they had claimed exemption under Notification No. 25/2012-ST on such services rendered to the Government departments and hospitals; that the department ought to have explained as to how the SCN can be issued on the ground of mis-declaration, mis-statement or suppression some facts from the knowledge of the department and that too with intent to evade service tax,

necessitating invocation of extended period of limitation of five years; that each and every periodical ST-3 Returns filed by them during the relevant period by claiming exemption to such taxable services rendered by them to Govt. departments/hospitals, etc.; that when substantial compliance of law, practice and procedures and available on records of the assessee, it cannot be considered to have any suppression of facts with intent to evade tax; and that on this ground alone, the demand is time-barred. They requested to follow the principles laid down by Hon'ble Supreme Court in *Collector v. Chemphar Drugs & Liniments — 1989 (40) E.L.T. 276 (S.C.)* and in the case of *Royal Enterprises – 2016 (337) ELT 482 (SC)* to ascertain whether extended period of limitation can be invoked in their case or otherwise.

43. Without prejudice to their submissions on limitation, the said assessee stated that Negative List given under Section 66D excludes the services by Government from the purview of service tax; that similar exemptions are also given under various services of Government vide Notification No. 25/2012-ST; and that the SCN does not dispute about providing security services to panchayats, municipalities, Government hospitals, collectorates, etc. for which they had raised proper invoices, declared availment of exemption notification No. 25/2012-ST while filing periodical ST-3 returns, etc. besides, claimed that the following provisions of Notification No. 25/2012-ST would prove that they have correctly availed exemption for such services.

44. As per Sl. 25 of Notification No. 25/2012-ST as amended by Notification No. 6/2014-ST dated 11.07.2014, services provided to Government, a local authority or a governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation, etc. are exempted from service tax. As per the ratio explained by CBEC vide Circular No. 172/7/2013-ST dated 19.09.2013 (F.No. B1/14/2013-TRU), as discussed in the foregoing para w.r.t. educational services, what constitutes the nature of a service is the utilization of such services by its recipients. For example, in the aforesaid case, they supplied security agency services and housekeeping services to the educational institutions. The nature and utilization of such services by the educational institutions made it a part of an education service, rather than security or housekeeping services. Similarly, if they supply drivers to a hospital it would be a supply of labour for our business. However, if the hospital use such drivers to run their ambulances, then it becomes essential part of hospital and healthcare services. In the same manner, the security guards supplied by them to the dispensaries, Government hospitals, etc. were used by such recipients for maintaining public health, sanitation, safety and security of patients, properties and assets of the hospitals, etc. In other words, for a hospital or healthcare institution, security is an essential part of its day-to-day functioning and such security is nothing but a part of their healthcare services. Therefore, they argued that the security services rendered to the Government hospitals, dispensaries, etc. were nothing but part of public health and sanitation

related activities undertaken by such hospitals and dispensaries, and therefore, fully exempted from service tax under Sl. No. 25 of Notification No. 25/2012-ST.

45. They stated that apart from demanding service tax on services rendered to Government hospitals and dispensaries, Point-2 of the SCN also seeks demand of service tax on their security agency services provided to panchayats, municipalities, collectorates, etc. Here again, they relied on the ratio explained by CBEC vide Circular No. 172/7/2013-ST dated 19.09.2013 (F.No. B1/14/2013-TRU), as discussed in the foregoing para w.r.t. educational services to claim that their supply of security services does not mean that the recipients consider them as the same security services, the same theory which constituted their security services and housekeeping services as part of educational services when provided the same to the educational institutions as discussed supra. They also invited attention to Sl. No. 39 of Notification No. 25/2012-ST which exempts services by Government, a local authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution. Similarly, Sl. No. 60 of Notification No. 25/2012-ST exempts Services by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution. They also explained the functions specified under the aforesaid provisions of Constitution. Article 243G of the Constitution discusses the Powers, authority and responsibilities of Panchayats, stating that "Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self government subject to such conditions as may be specified therein, with respect to (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the *Eleventh Schedule*". Eleventh Schedule of Indian Constitution contains the following 29 functional items placed within the purview of the Panchayats :

1.	Agriculture including agricultural expansion
2.	Land improvement, implementation of land reforms, land consolidation and soil conservation
3.	Animal Husbandry, Dairying and poultry
4.	Fisheries Industry
5.	Minor irrigation, water management and watershed development
6.	Social forestry and farm forestry
7.	Small scale industries in which food processing industry is involved
8.	Minor forest produce
9.	Safe water for drinking
10.	Khadi, village and cottage industries
11.	Rural housing
12.	Fuel and fodder
13.	Rural electrification, including distribution of electricity
14.	Road, culverts, bridges, ferries, waterways and other means of communication
15.	Education including primary and secondary schools

16.	Non-conventional sources of energy
17.	Technical training and vocational education
18.	Adult and non-formal education
19.	Public distribution system
20.	Maintenance of community assets
21.	Welfare of the weaker sections, in particular of the schedule caste and schedule tribes
22.	Social welfare, including welfare of the handicapped and mentally retarded
23.	Family welfare
24.	Women and child development
25.	Markets and Fairs
26.	Health and sanitation including hospitals, primary health centres and dispensaries
27.	Cultural activities
28.	Libraries
29.	Poverty Alleviation Programmes

46. It is expected that the subjects covered under the Eleventh Schedule of the Indian Constitution are made to ensure the development of the rural India. Article 243W of the Constitution discusses the Powers, authority and responsibilities of Municipalities, etc. stating that "Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow,..... (b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the *Twelfth Schedule*". List of 18 items covered under the Twelfth Schedule of the Indian Constitution are as follows :

1.	Regulation of land use and construction of land buildings
2.	Urban planning including the town planning
3.	Planning for economic and social development
4.	Urban poverty alleviation
5.	Water supply for domestic, industrial and commercial purposes
6.	Fire services
7.	Public health sanitation, conservancy and solid waste management
8.	Slum improvement and up-gradation
9.	Safeguarding the interests of the weaker sections of society, including the physically handicapped and mentally unsound
10.	Urban forestry, protection of environment and promotion of ecological aspects
11.	Construction of roads and bridges
12.	Provision of urban amenities and facilities such as parks, gardens and playgrounds
13.	Promotion of cultural, educational and aesthetic aspects
14.	Burials and burials grounds, cremation and cremation grounds and electric crematoriums
15.	Cattle ponds, prevention of cruelty to animals
16.	Regulation of slaughter houses and tanneries
17.	Public amenities including street lighting, parking spaces, bus stops and public conveniences
18.	Vital statistics including registration of births and deaths

47. They pointed out that a careful reading of the two lists, as given above, makes it clear that "Security Services" provided to Government Hospitals and Medical Colleges, as well as other institutions of Central/State/District/Local authorities, are clearly part of their assigned duties intended for public health, safety, security of public at large, etc. and are appropriately covered under the relevant entries specified above, for the purpose of exemption from service tax. Again, Sl. No. 58 of the same Notification No. 25/2012-ST fully exempts Services provided by Government or a local authority by way of testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force, and if the activities undertaken by each of our service recipients are seen, it will be unambiguously clear that the services rendered to them are fully exempted from service tax. Thus, they claimed that the services rendered by them to the aforesaid type of public health dispensaries, Government hospitals, municipalities, panchayats, collectorates, etc. would constitute exemption from service tax under the provisions of Notification No. 25/2012-ST as amended, and requested to drop the demand on ground of merits also, apart from the earlier ground of time-bar.

48 *Rev.Para-3: Allegation regarding wrong availment of Reverse Charge Mechanism under Notfn. No. 30/2012:* The said assessee stated that the SCN alleges that they have not discharged service on the security services rendered to the government bodies and undertakings on RCM basis; that while body corporates are liable to discharge such service tax liability as recipient of taxable services, in cases of Government bodies they are supposed to discharge the same on RCM as supplier of taxable service in terms of Notification No. 30/2012-ST dated 20.06.2012 as amended; that while they agreed that notification No. 30/2012-ST provides for service tax payment by the body corporates as service recipients, they submitted that the department has wrongly applied the said notification in respect of their services provided to Government bodies and undertakings; that they have already declared the taxable services provided to all clients including body corporates, government bodies, undertakings and have also declared the same in our ST-3 returns; that it is not understood as to how RCM is sought to be applied in respect of Government bodies and undertakings when the notification does not say anything in this regard, nor does the SCN give any explanation on this aspect.

49. They stated that the question of RCM as per Notification No. 30/2012 does not arise in respect of their services rendered to Government bodies and undertaking; that as already explained in respect of Point-2 of the SCN in the foregoing paras, their services rendered to Municipal corporation and other Government bodies are not leviable to service tax as per Section 66D read with mega exemption Notification No. 25/2012-ST. They requested to consider their earlier submissions given in reply to Para-2 *mutatis mutandis* to the allegations in Para-3 also, and stated that the demand involved in this Point-3 is also hit by limitation of time-

bar. Although the issue is discussed in Para 26 to 32 of the SCN, they requested attention to Para 37.2 of the SCN which would establish that the SCN was issued in undue haste with the sole purpose of issuing the same within the time limit of five years provided under the law, without affording any opportunity to them to explain the facts and legality of the matter; that the SCN was issued by violating all principles of natural justice and the basic rights protected by the Constitution of India as nowhere in the SCN, it is stated as to how they mis-declared any facts or suppressed any information with intent to evade service tax which would have invited the extended provisions of the law; that a simple reading of Para-26 of the SCN shows the illegal way in which a fake demand has been thrust upon them as it read: "*on reconciliation of the taxable value of ST-3 returns vis-à-vis the registers and excel sheets submitted by the assessee, it is observed that they have discharged service tax on RCM basis*"; that the SCN itself states the facts that they issued tax invoices for the services rendered to the aforesaid Government bodies and undertakings etc.; that they have scrupulously maintained records manual registers for such taxable services provided to such departments/establishments, etc.; that they had submitted such invoices, manual registers and invoice wise details of all taxable services when required by the audit officers; that they had claimed exemption under Notification No. 25/2012-ST on such services rendered to the Government departments and hospitals; that however, the SCN does not indicate as to how the department has invoked the ground of mis-declaration, mis-statement or suppression some facts from the knowledge of the department and that too with intent to evade service tax, necessitating invocation of extended period of limitation of five years; that each and every periodical ST-3 Returns filed by them during the relevant period, wherein they had categorically claimed exemption to such taxable services rendered to Govt. departments/hospitals, etc.; and that it is a settled principle of law that when substantial compliance of law, practice and procedures and available on records of the assessee, it cannot be considered to have any suppression of facts with intent to evade tax. and this ground alone, the demand being time-barred.

50. Without prejudice to their submissions on time-bar as above, they also stated that Negative List given under Section 66D excludes the services by Government from the purview of service tax. Similar exemptions are also given under various services of Government vide Notification No. 25/2012-ST; that the SCN does not dispute that they have supplied security services to municipalities, government bodies and undertakings, such as Water and Land Management Institute, Anand, Surat R&B Division, Rajkot Municipal Corporation, Anand Irrigation Division, etc. for which they had raised proper invoices, declared availment of exemption notification No. 25/2012-ST while filing periodical ST-3 returns, etc. and drew attention to the provisions of Notification No. 25/2012-ST which has already been explained earlier in respect of Rev. Para-2 above to state that as per the ratio explained by CBEC vide Circular No. 172/7/2013-ST dated 19.09.2013 (F.No. B1/14/2013-TRU), what constitutes the nature of a service is the utilization of such services by its recipients; and that as

per Sl. No. 39 of Notification No. 25/2012-ST which exempts services by Government, a local authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution; that similarly, Sl. No. 60 of Notification No. 25/2012-ST exempts Services by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution and quoted the schedule given under these constitutional provisions by stating that the security services provided by them to Government bodies as well as other institutions of Central/State/District/Local authorities, are clearly part of their assigned duties intended for public consumption, safety, security of public at large, etc. and are appropriately covered under the relevant entries specified above, for the purpose of exemption from service tax. The also stated that as per Sl. No. 58 of the same Notification No. 25/2012-ST, services provided by Government or a local authority by way of testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force are also exempted.

51. *SCN Time-Barred:* The said assessee reiterated that the present SCN cannot survive as it has been wrongly issued by invoking extended period of limitation of five years; that in fact, all the three revenue paras of the subject SCN categorically indicates that they had been scrupulously maintaining records in respect of all the taxable services provided by them and were also declaring all such details in our periodical ST-3 Returns; and that the SCN does not explain, nor does it even remotely indicate any allegations as to how they have suppressed any information from the knowledge of the department or how they have mis-declared or mis-stated any facts with intent to evade service tax; that in the absence of any such essential ingredients the SCN is absolutely illegal and requires to be dropped *per se*. They also submitted that various judicial authorities including Hon'ble Apex Court and High Courts have repeatedly examined the question of suppression of facts and settled the principles of law by providing clear guidelines in this regard, and cited the decision of Hon'ble High Court of Gujarat in the case of *Bhagwati Spherocast Pvt. Ltd. cited at 2019 (368) ELT 308 (Guj)*; Hon'ble Tribunal's decision in *re Asian Tubes Ltd. – 2011 (21) ELT 58 (Tri.Ahd)*; *Parul Associates Interiors Pvt. Ltd. reported in 2016 (46) STR 373 (Tri.Bang)*; Allahabad High Court's decision in *Zee Media Corporation Ltd. – 2018 (18) GSTL 32 (Allh)*; and Tribunal's decision in *Savira Industries cited at 2016 (331) ELT 504 (Tri Chennai)*. They again cited Supreme Court's decision in the case of *HMM Ltd. – 1995 (76) ELT 497 (SC)* that extended period cannot be invoked unless the SCN puts the noticee specifically as to which of the commissions or omissions has been committed by them. Accordingly, they stated that the subject SCN requires to be dropped.

DISCUSSION AND FINDINGS

52. Having gone through the records of the case and the written and oral submissions made by the said assessee, I find that the show-cause-notice involves three different issues for determination, each of which has been vehemently contested by the said assessee on merits as well as on limitation. Therefore, I would discuss each of them separately on merits and thereafter, on limitation.

53.1. *Rev.Para -1: Allegation regarding wrong availment of exemption in respect of the services provided to educational schools, colleges, hostels (chatralayas) etc.:* - I find that the SCN does not dispute the exemption availed by the said assessee in respect of the security services provided to residential schools, private/Government schools and colleges, on the ground that such institutions satisfy the definition of 'educational institutions' in terms of Para 2(oa) of Notification No. 25/2012-ST dated 20.06.2012 and that such services form part of the list given under Sl. No. 9(b)(i) to (iv) of the same notification. At the same time, SCN seeks to deny exemption to the security services when provided to the hostels governed by the Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation), on the ground that such security services are provided to the hostels, which are used for the residence of students and not for imparting education, hence such hostels cannot be considered as 'educational institutions' for the purpose of Para 2(oa) of the said Notification No. 25/2012-ST. Here, the said assessee has pointed out that the SCN itself admits in Para 8.2 that these hostels are used only for the residence of the students and thus, the sole ground for seeking denial of exemption is on the ground that these hostels are not located or functioning from within the same campus where education is also imparted to the same students. Further, they have also pointed out to Para 37.1 of the SCN which indicates that while exemption has been allowed in respect of the hostels integrated with the educational institutions, such exemption is sought to be denied to the other hostels only on the ground that they are functioning from a location different from where its corresponding educational institutions function. Thus, I find that the difference is drawn only for the hostels which are though used as residence for students. but functioning at a location different from where the schools/colleges where these students undergo education. In other words, while the SCN stated that hostels cannot be considered as educational institutions as no education is imparted to the students residing there, it does not consider the fact that the schools where the same students undergo education are located in a different site nearby. The SCN does not explain as to how it distinguished residential schools and hostels while allowing exemption to the former and denying the same to the latter, merely on the basis of location of both the school and the hostel functioning from the same campus or otherwise.

53.2. I have gone through the official website of Gujarat Government at <https://tribal.gujarat.gov.in/> referred to by the said assessee which provides details of educational activities carried out by the Gujarat Tribal Development Department for the educational benefits of tribal children. Out of the various innovative schemes implemented by the State Govt., residential schools (Low Literacy Girls Residential Schools – LLGRS, Adarsh Nivasi Shalas and Ashram Shalas) and hostels (Samras hostels and Grant-in-Aid hostels) are two important projects on educational activities exclusively for tribal children. Eklavya Girls Residential Schools (EGRS) are the residential schools exclusively for tribal girls and are running across ten districts of the State under the scheme of strengthening education among ST girls. All these residential schools offer residential facilities and schooling opportunities to tribal students. Further, State has set up total 44 Adarsh Nivasi Shalas with a view to facilitate education of tribal students beyond primary level, where more than 5600 tribal children have been enrolled with free education, boarding, lodging, clothing etc. are provided. Similarly, the state has more than 500 Ashram Shalas where tribal children from very poor families are accommodated to provide education, boarding, lodging, etc. Further, Samras Hostels and Grant-in-Aid hostels are also set up by the State Government in all districts with the sole purpose of facilitating education among the tribal children. While there are more than 950 GIA hostels located in almost all districts in the state with more than 50000 seats, Samras Hostels are located in major cities/towns with intended capacity of 12000 students. These details make it evidently clear that all these hostels and residential schools governed by Gujarat Tribal Development Corporation for Scheduled Tribes are intended only for the tribal students and that too exclusively for their educational purposes. It is also clear that the charges and fees, whether charged from the students or given by the Govt. or shared by participating NGOs, are not specifically separated for education and hostel facilities. In short, there is no dispute that the inmates of these hostels are students of Scheduled Tribe and their education, food, accommodation, clothing, etc. are all form part of an integrated scheme administered by the State Government and none of them is separable in the nature, character or cost.

53.3. With effect from July, 2012, all services, except those specified in the negative list [*Section 66D of the Finance Act, 1994*], are taxable under Section 66B of the Finance Act, 1994. The education related services covered by the negative list, as it existed upto 14.05.2016, are specified in clause (1) of Section 66D of the Finance Act, 1994, as

“services by way of -

- (i) pre-school education and education up to higher secondary school or equivalent;*
- (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;*
- (iii) education as a part of an approved vocational education course”.*

53.4. Vide Notification No. 06/2014-ST dated 11.07.2014, clause (oa) was also inserted in Para 2 [definitions] of the Notification No.25/2012-ST dated 20.06.2012 which defined 'educational institution' as -

'(oa) "educational institution" means an institution providing services specified in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994)';

53.5. The negative list entry in clause (l) of Section 66D of the Finance Act, 1994 was omitted w.e.f. 14.05.2016. With this omission, specified educational services were no more in the negative list and were liable to service tax. However, these services continued to be exempted from payment of service tax under Entry No. 9 of Notification No. 25/2012-ST dated 20.06.2012 [read with clause (oa) of Para 2 of the notification], as amended w.e.f. 14.5.2016, vide Notification No. 9/2016-ST dated 01.03.2016. Relevant portion of the said Notification 9/2016-ST dated 01.03.2016 reads as under:

(ii) for clause (oa), the following shall be substituted with effect from such date on which the Finance Bill, 2016, receives assent of the President of India, namely : -

'(oa) "educational institution" means an institution providing services by way of:

- (i) pre-school education and education up to higher secondary school or equivalent;*
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;*
- (iii) education as a part of an approved vocational education course";*

53.6. Thus, the amendments in relation to educational services, w.e.f. 14.5.2016, are the omission of clause (l) of section 66D and the substitution of the definition of 'educational institution' in clause 2 (oa) of Notification No. 25/2012-ST dated 20.06.2012. The net impact of these amendments is that the definition of educational institution has been substituted in clause (oa) of Para 2 of Notification No. 25/2012-ST so as to cover the educational institutions which were covered under erstwhile clause (l) of Section 66D. Accordingly, post amendment of the above stated legal provisions, the services provided to and/or provided by educational institutions by way of auxiliary education services remain exempt.

53.7. Services provided to and/or by an educational institution in respect of education by way of auxiliary educational services were exempted under Notification No. 25/2012-ST dated 20.06.2012. The relevant portion of the Notification No. 25/2012-ST dated 20.06.2012 is reproduced below: -

"G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section

(i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services leviable thereon under section 66B of the said Act, namely:-

1. Services.....
2.
3.
4.
5.
6.
7.
8.
9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

- (a) auxiliary educational services; or
- (b) renting of immovable property;

10. Services provided to a recognised sports

2. Definitions. - For the purpose of this notification, unless the context otherwise requires,-

(f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge-enhancement activity, whether for the students or the faculty, or any other services which educational institutions carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution."

53.8. The said assessee has stated that the services provided by them to the hostels governed by Gujarat Tribal Development Corporation are covered by the aforesaid definition of "auxiliary educational services", which I find relevant especially after the scope of exemption has been specified vide Notification No. 6/2014-ST dated 11.07.2014, which amended Notification No. 25/2012-ST, by substituting Entry 9 thereto, with the following entry:-

"9. Service provided,-

- (a) by an educational institution to its students, faculty and staff;
- (b) to an educational institution, by way of,- (i) transportation of students, faculty and staff;
- (ii) catering, including any mid-day meals scheme sponsored by the Government ;
- (iii) security or cleaning or house-keeping services performed in such educational institution;
- (iv) services relating to admission to, or conduct of examination by, such institution;"

53.9. I have also examined CBEC Circular No. 172/7/2013-ST dated 19.09.2013 (F.No. B1/14/2013-TRU) which is very crucial in determining this issue. The same is reproduced as follows: -

"The following representations have been received seeking clarifications regarding the levy of service tax on certain services relating to the education sector :

1. Private Schools Correspondents Confederation, Madurai.
2. Tamil Nadu Nursery, Primary, matriculation and Higher Secondary Schools Association, Chennai.
3. Punjab Association, Chennai.
4. Association of Self financing Universities of Rajasthan
5. Unaided Schools' Forum, Mumbai.
6. Vedavalli Vidyalaya, Wallajapet.
7. Independent Schools Associations, Chandigarh.
8. Mother Teresa Public School, New Delhi.
9. BVM Global, Chennai.
10. Sastra University, Tanjavur.
11. HLC International, Chennai.
12. Sodexo Food Solutions, Mumbai.
13. Federation of Associations of Maharashtra, Mumbai.

2. The matter is covered by two provisions of the Finance Act, 1994. Section 66D of the Finance Act contains a negative list of services and clause (1) thereof reads as under :

"services by way of-

- (i) pre-school education and education upto higher secondary school or equivalent;
- (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
- (iii) education as a part of an approved vocational education course; "

Further Section 93(1) of the Finance Act, 1994, enables the Government to exempt generally or subject to such conditions taxable service of specified description. By virtue of the said power, Government has issued a Notification No. 25/2012-S.T., dated 20th June, 2012, exempting certain services. Sl. No. 9 thereof reads as follows :

"Services provided to an educational institution in respect of education exempted from service tax, by way of,-
(a) auxiliary educational services; or
(b) renting of immovable property; "

As defined in the said notification, "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge-enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.

3. By virtue of the entry in the negative list and by virtue of the portion of the exemption notification, it will be clear that all services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as "auxiliary educational services" and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from Service Tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the exemption notification.

4. In addition to the services mentioned in the definition of "auxiliary educational services", other examples would be hostels, housekeeping, security services, canteen, etc.

5. Thus the apprehensions conveyed in the representations submitted by certain educational institutions and organizations have no basis whatsoever. These institutions and organizations are requested not to give credence to rumours or mischievous suggestions. If there is any doubt they are requested to approach the Chief Commissioner concerned.

6. All concerned are requested to acknowledge the receipt of this circular."

53.10. I agree with their argument that the above circular unambiguously reveals the intention of the legislature to exempt all activities connected with the education, and that the specific examples of security services and housekeeping services, hostels, as well as transport services by independent service providers to educational institutions would qualify for exemption as 'auxiliary educational services'.

53.11. Further, the said assessee has also referred to the Service Tax Education Guide published by CBEC on 19.06.2012 which clarifies taxability on education services at Para 4.12, relevant part of which is as follows: -

*"4.12.4 Are services provided by boarding schools covered in this entry?
Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in Section 66F of the Act. Such services in the case of boarding schools are bundled in the ordinary course of business. Therefore the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle. In this case since dominant nature is determined by the service of education other dominant service of providing residential dwelling is also covered in a separate entry of the negative list, the entire bundle would be treated as a negative list service."*

53.12. I find that Para-4 of the aforesaid CBEC Circular dated 19.09.2013 which specifically covers the security services and hostels under the term 'auxiliary educational services', as well as Para 4.12.4 of the Education Guide published by CBEC which covers the boarding and lodging facilities of educational institutions as 'bundled services' under section 66F if the cost of such facilities are inseparable from education charges, irrefutably settle the present dispute. Accordingly, I hold that the security services provided by the said assessee to the hostels run by Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation) are nothing but 'auxiliary educational services' as provided in Board's Circular No. 172/7/2013-ST dated 19.09.2013 and/or 'bundled services' as clarified under Para 4.12 of the Service Tax Education Guide published by CBEC on 19.06.2012, hence exempted from service tax under Notification No. 25/2012-ST dated 20.06.2012.

54. Next issue which requires determination w.r.t. Rev Para-1 is the proposal for denying exemption to man-power supply services provided by the said assessee to the hostels and residential schools governed by Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation) and also to Private/Government schools and colleges. While the SCN has been issued on the ground that the assessee had entered into a contract with the residential schools, hostels, and other Govt./private schools and colleges for supply of labour and had charged their service recipients on the basis of man-days for which such manpower is supplied, I find no dispute that such manpower/labour included cooks, gardeners, sweepers, peons, drivers, etc. whom their service recipients, i.e. residential schools, hostels, and other schools and colleges have utilized for their house-keeping and operational activities. Similarly, after the aforesaid discussions in respect of the hostels governed by Gujarat Tribal Development Corporation for Scheduled Tribes (Adijati Vikas Corporation), I also find no dispute that all their service recipients, i.e. residential schools, hostels as well as the other private/Govt. schools and colleges are involved solely for educational purpose of students. Therefore, I find that the ratio of the aforesaid Para-4 of the CBEC Circular dated 19.09.2013 (supra) which specifically covers housekeeping services provided to educational institutions and hostels under the term '*auxiliary educational services*', is squarely applicable here also. Thus, I am convinced that if an educational institution or its hostel hires cooks, gardeners, sweepers, peons, drivers, labour or any other man-power to carry out their operational activities and housekeeping services, then the manpower supply services provided by the service provider to such educational institution are exempt by virtue of the exemption Notification No. 25/2012-ST dated 20.06.2012. Therefore, I hold that the demand raised on this issue is also not maintainable.

55.1. *Rev.Para-2: Allegation regarding wrong availment of exemption in respect of security services provided to Government hospitals, dispensaries, panchayats, collectorates, etc:* - With the facts having not disputed, the only issue to be determined is whether security services provided by the said assessee to various Government hospitals, dispensaries, panchayats, collectorates, etc. are leviable to service tax, or otherwise. The SCN alleges that neither the Negative List given under section 66D of the Act nor the mega exemption Notification No. 25/2012-ST exempts such services and hence service tax is leviable. However, the said assessee has argued that they have correctly availed exemption under Notification No. 25/2012-ST. In order to support their claim for exemption, the assessee has referred to separate entries of the said notification, which are discussed as follows to ascertain their applicability.

55.2. Sl. 25 of Notification No. 25/2012-ST as amended by Notification No. 6/2014-ST dated 11.07.2014, specifies that the services provided to Government, a local authority or a governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation, etc. are exempted from service tax.

Further, Sl. No. 58 of Notification No. 25/2012-ST exempts services provided by Government or a local authority by way of testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force. Similarly, Sl. No. 39 of Notification No. 25/2012-ST exempts services by Government, a local authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution. Again, Sl. No. 60 of Notification No. 25/2012-ST exempts Services by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution. They have also quoted the Eleventh Schedule and Twelfth Schedule from the Constitution which are referred under Sl. No. 39 and 60 of the notification, to claim that their services provided to hospitals, primary health centres and dispensaries would qualify the nature of health and sanitation works carried out by such service recipients and that their services provided to panchayats, municipalities and collectorates would qualify the nature of public health sanitation, conservancy and solid waste management works carried out by such authorities. In order to thrust their claims, they have relied upon the aforesaid CBEC Circular dated 19.09.2013 (supra) to draw a parallel that what constitutes the nature of a service is the utilization of such services by its recipients. Thus, it is the case of the said assessee that the security services provided by them to the Govt. hospitals, dispensaries and to the local authorities such as municipalities, panchayats and collectorates, etc. would form part of the essential services, as specified under the mega exemption notification, provided by such hospitals and authorities to the members of the public. I do not find merit in this interpretation of the assessee for two reasons. First, I find that Board's Circular dated 19.09.2013 speaks about the end-use classification of the service as Sl No. 9 of the mega exemption notification specifically exempts auxiliary educational services provided to the educational institutions, whereas Sl. Nos. 25, 58, 39 or 60 of the said notification quoted by the assessee does not mention about the services provided 'to' hospitals, dispensaries or the local authorities but only exempt the services provided 'by' such specified authorities. Further, I am unable to accept their claim that security services provided by them to these authorities would qualify the nature any of the specified activities carried out by such recipient authorities, viz. health and sanitation works, or slum improvement or upgradation, or testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, or public health sanitation, conservancy and solid waste management works, etc. Therefore, I do not find substance in these arguments made by the said assessee with regard to Rev. Para-2.

56. *Rev.Para-3: Allegation regarding wrong availment of Reverse Charge Mechanism under Notfn. No. 30/2012:* - I find that the SCN proposes recovery of service tax on the security services provided by the said assessee to various Govt. bodies/undertakings on the ground that they had wrongly claimed liability on such services by the service recipient on RCM basis. The assessee had been providing security services to various body corporates and

Govt. bodies/undertakings, and claiming RCM based service tax liability specified under Rule 2(1)(d) of the Service Tax Rules, 1994 read with Sl. No. 8 of Notification No. 30/2012-ST dated 20.06.2012 as amended. The case is that the notification provides RCM based service tax payment by service recipients only in respect of the services provided to 'body corporates', while the said assessee, as the service provider, is required to discharge service tax on such services provided to Govt. bodies/undertakings. However, the argument by the said assessee is that their services provided to Govt. bodies/undertakings are fully exempted in terms of Section 66D of the Act read with mega exemption Notification No. 25/2012-ST on the grounds and circumstances as claimed by them in respect of Rev. Para-2 above. They sought to consider their submissions given in respect of Rev. Para-2 *mutatis mutandis* to the present Rev. Para-3, and claimed that as per Sl. No. 25 of Notification No. 25/2012-ST, their services to Govt. bodies and undertakings were used by such recipients for maintaining public health, sanitation, safety and security of public, properties and assets of the government, etc. Similarly, Sl. Nos. 39 and 60 of the notification exempts the functions specified under Articles 243W and 243G of the Constitution read with the Eleventh and Twelfth Schedules thereto covering activities such as agriculture including agricultural expansion, minor irrigation, water management and watershed development, safe water for drinking, roads, culverts, bridges, ferries, waterways and other means of communication, maintenance of community assets, water supply for domestic, industrial and commercial purposes, construction of roads and bridges, and public amenities including street lighting, parking spaces, bus stops and public conveniences, etc. specified in the said Schedules. They also quoted Sl. No. 58 of Notification No. 25/2012-ST which fully exempts Services provided by Government or a local authority by way of testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force. Similar to their submission in Rev. Para-2 above, they have relied upon the aforesaid CBEC Circular dated 19.09.2013 (*supra*) to draw a parallel that what constitutes the nature of a service is the utilization of such services by its recipients. For the same reasons as I have explained in Para 55 above, I do not find substance in these arguments put forth by the said assessee as none of the Sl. Nos. 25, 58, 39 or 60 of Notification No. 25/2012-ST quoted by them mentions that the services provided to Govt. bodies/undertakings are exempt, nor the security services provided by them would qualify the nature of any services specified in these serial numbers, and hence I am not inclined to accept their claim on exemption on this revenue point.

57. **Limitation:** -Having discussed the merits of the three issues involved, I would now turn to the arguments of the said assessee that the entire demand under the subject SCN is hit by time-bar on the ground that the necessary ingredients specified under the proviso to Section 73(1) of the Act do not exist in the case. Since the SCN separately discusses the grounds for invoking the extended provisions in each of the three revenue paras. I would discuss each such ground separately in the following paragraphs.

58.1. As regards the first revenue para, Para 16 of the SCN states that:

"It appears that the assessee has willfully and wrongly claimed exemption under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012, and have suppressed the value of taxable services in the ST-3 returns filed by them. They have failed to intimate the department that they were providing taxable service as per Section 65B(44) of the Act read with Section 65B(51) of the Act, before the audit objection was detected. It, therefore, appears that they have mis-stated and suppressed the material facts with intent to evade the payment of service tax. Therefore, the unpaid service tax of Rs. 2,17,69,841/- is required to be demanded and recovered from the assessee under the proviso to Section 73(1) of the Act along with interest under Section 75 of the Act. By wrongfully claiming exemption under Notification No. 25/2012-ST dated 20.06.2012 as amended and by acts of contravention of the Act and the Rules made thereunder, the assessee has also rendered themselves liable to penalty under the provisions of Section 78(1) of the Act."

58.2. The SCN admits that the assessee has been filing ST-3 returns and have wrongly claimed exemption under Notification No. 25/2012-ST. Although the SCN says that the assessee had failed to intimate the department that they were providing taxable services as per Section 65B(44) read with Section 65B(51) of the Act before the audit objection was detected, it does not specify any such provisions which mandate them for such an intimation, especially when the assessee is holding a valid service tax registration and regularly filing ST-3 returns, nor could I find any such requirements in the law. Therefore, the only aspect which requires scrutiny is whether the assessee has committed any "wilful misstatement or suppression of facts with intent to evade payment of service tax" while claiming exemption under Notification No. 25/2012-ST and while filing ST-3 returns. I have examined copies of ST-3 returns filed by the assessee on half-yearly basis, all which form part of their submission dated 07.07.2020 filed during the personal hearing. Accordingly, I find that each of the half-yearly ST-3 returns for FYs 2014-15, 2015-16 and 2016-17 reveals that the assessee had declared that they had been availing exemption as per Notification No. 6/2014-ST and have declared the amounts charged for such exempted services provided or to be provided to their service recipients. Such availment of exemption along with corresponding notification number are declared in Col. (A.11) and the amount charged towards exempted services is declared in Col. (B1.9) of the ST-3 returns. SCN does not allege that the value charged by the assessee towards such exemption as claimed in the ST-3 return were wrong or mis-declared. In fact, I find that they have declared specific Sl. No. 1(iii) of Notification No. 6/2014-ST which amended the mega exemption Notification No. 25/2012-ST by inserting Sl. No. 9(b)(i) to (iv) whereby exemption has been extended to security or cleaning or house-keeping services provided to educational institutions, which is the core issue involved in this revenue para. When such substantial compliance has been done by the assessee while filing their periodical returns, I have no reason to accept the allegation that they had suppressed, misstated or misdeclared any information regarding

availment of exemption or the value of such exempted services charged from their clients, with any intent to evade payment of service tax.

58.3. I find that the Hon'ble Supreme Court, various High Courts as well as the Tribunals across the country have settled the principle of law, under a plethora of judgments, that the extended period of limitation cannot be invoked where the assessee has declared all relevant information in their periodical returns. In the case of *Chemphar Drugs & Liniments cited at 1989 (40) ELT 276 (SC)*, Hon'ble Supreme Court has set guidelines for invoking extended period by observing that the extended period of five years is applicable only when something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise; that where the Department had full knowledge about the facts and the manufacturer's action or inaction is based on their belief that they were required or not required to carry out such action or inaction, the period beyond six months cannot be made applicable. Similarly, in the case of *Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay* reported in 1995 (78) E.L.T. 401 (S.C.), Hon'ble Apex Court held that mere omission to disclose the correct information would not amount to suppression of facts unless there was a deliberate attempt made to escape the payment of duty, and where facts are known to both the parties it cannot be held that there was suppression of facts. Again, in *Royal Enterprises - 2016 (337) ELT 482 (SC)* Supreme Court held that that mere omission to disclose would not amount to suppression of facts, unless there was deliberate attempt to evade duty, whereas in the present case, the SCN does not indicate any evidences regarding the assessee not disclosing any specific information or having any deliberate attempt to evade service tax. In the case of *ZYG Pharma Pvt. Ltd. cited at 2017 (358) E.L.T. 101 (M.P.)*, Hon'ble High Court of Madhya Pradesh has stated that the respondent cannot be held guilty of suppression or misrepresentation when he had been submitting monthly returns showing availment of subject credit. The said order was delivered after considering several judgments including those delivered by the Hon'ble Apex Court, and hence I quote the relevant portion below: -

"8. In the present case, there was no suppression or misrepresentation in respect of availment of CENVAT credit and, therefore, this Court is of the considered opinion that in the light of the judgment delivered by the Division Bench of Gujarat High Court, the Tribunal was justified in remanding the matter back and holding that mandatory equal penalty and extended period of 5 years are not attracted. The High Court of Karnataka in the case of Commissioner of Central Excise, Bangalore v. Sanmar Speciality Chemicals Ltd., reported in 2016 (43) S.T.R. 347 (Kar.) in paragraphs 7 and 8 has held as under :

7. It is an admitted fact that the input tax credit was claimed in the return of the assessee from time to time and therefore, it was not a matter for suppression of facts, as sought to be canvassed on behalf of the appellant.

8. Once full facts were disclosed, the normal period of limitation would be one year, whereas the proceedings are initiated after the expiry of a period of one

year. Therefore, we do not find that the Tribunal has committed any error in observing that the demand was barred by limitation.

9. In the aforesaid case also, as facts were fully disclosed and there was no suppression, it was held by the Division Bench that extended period of limitation is not invocable. A similar view has been taken in the following cases : *Cosmic Dye Chemicals v CCE* reported in 1995 (75) E.L.T. 721 (S.C.); *Simplex Infrastructures Ltd. v CST* reported in 2016 (42) S.T.R. 634 (Kar.); *Gopal Zarda Udyog v CCE* reported in 2005 (188) E.L.T. 251 (S.C.); *Apex electricals Pvt. Ltd. v UQI* reported in 1992 (61) E.L.T. 413 (Guj.); *Unique Resin Industries v CCE* reported in 1995 (75) E.L.T. 861 (T); *CCE v Chemphar Drugs and Liniments* reported in 1989 (40) E.L.T. 276 (S.C.); *Padmini Products v CCE* reported in 1989 (43) E.L.T. 195 (S.C.); *Pushpam Pharmaceuticals Co. v CCE* reported in 1995 (78) E.L.T. 401 (S.C.); *Anand Nishikawa Co. Ltd. v. CCE* reported in 2005 (188) E.L.T. 149 (S.C.); *CCE v Pioneer Scientific Glass Works* reported in 2006 (197) E.L.T. 308 (S.C.); *Uniworth Textiles Ltd. v CCE* reported in 2013 (228) E.L.T. 161 (S.C.); *Pahawa Chemicals Pvt. Ltd. v CCE* reported in 2005 (189) E.L.T. 257 (S.C.); *CCE v. N. R. Agarwal Industries* reported in 2014 (300) E.L.T. 213 (Guj.); *CCE v Triveni Engineering & Industries Ltd.*, reported in 2005 (317) E.L.T. 408 (Allh.); *Associated Pigments Ltd. v CCE* reported in 1993 (68) E.L.T. 514 (Cal.); *CCE v Punjab Laminates Pvt. Ltd.* reported in 2006 (202) E.L.T. 578 (S.C.); and, *Cadila Pharmaceuticals Ltd. v CCE* order dated 10-11-2016 [2017 (349) E.L.T. 694 (Guj.)] passed by the Gujarat High Court, at Ahmedabad and, therefore, this Court is of the considered opinion that the Tribunal was justified in holding that extended period of five years and mandatory equal penalty are not attracted."

58.4. In the case of *Continental Foundation Jt Venture* reported in 2007 (216) ELT 177 (SC), Supreme examined the ingredients of Central Excise Act, 1944 for invoking extended period, the provisions of which are *pari materia* to Section 73(1) of the Finance Act, 1944. Para 10 and 12 of the said judgment are quoted below: -

"10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.

11.

12. As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word 'wilful', preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be suppression or mis-statement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11A. Mis-statement of fact must be wilful."

58.5. Supreme Court in *re Anand Nishikawa Co. Ltd* [2005 (188) ELT 149 (SC)] held that when facts known to both parties, omission by one to do what he might have done not that he must have done would not render it suppression. In the case of *Astra Microwave Products Ltd. cited at 2016 (342) ELT 300 (Tri.Hyd)*, Hon'ble Tribunal held that the extended period of limitation cannot be invoked in cases where the assessee has informed the department about availment of exemption through monthly returns. Hon'ble High Court of Gujarat has observed in the case of *Apex Electricals Pvt. Ltd. - 1992 (61) ELT 413 (Guj)* that any information not required to be supplied under law if not supplied does not amount to suppression. In *Asian Tubes Ltd. - 2011 (210) STR 58 (Tri.Ahd)*, Tribunal held that suppression is not attributable in cases where details of credit availment are declared in the periodical returns.

58.6. In a recent case of *Commissioner Vs. Goyal Proteins Ltd. cited at 2017 (355) E.L.T. A27 (S.C.)*. Supreme Court has dismissed a departmental appeal filed against Rajasthan High Court's order [2017 (355) ELT 72 (Raj)] which ruled that extended period of limitation not invocable for clearances of exempted and dutiable goods shown in the monthly returns. High Court of Gauhatti had passed an order *in re Bordubi Engineering Works cited at 2016 (42) S.T.R. 803 (Gau.)* the facts of which are very similar to the present one. In the said case, Service Tax returns were regularly submitted by the assessee showing details and particulars of exemption availed of by them. After examining the ingredients of law which requires invocation of extended period, High Court observed as follows: -

"5. In the case at hand, the stance taken by the petitioner all along is that the petitioner has been submitting its Service Tax returns regularly by showing the details and particulars of the exemption availed of by them, which were within their knowledge and further that the respondent No. 3, while issuing the impugned order, has failed to consider the relevant fact that in terms of the letter of award, the burden of Service Tax was on the service receiver and the component of Service Tax paid by the service receiver was realized from the petitioner as service provider, which clearly indicates that it had nothing to gain by evading payment of the Service Tax. In our opinion, the construction placed by the Apex Court on the provisions of Section 11A(1) of the Central Excise Act in *Sarabhai M. Chemical (supra)* will also apply while construing the provisions of Section 73(1) of the Finance Act, 1994. So construed, the Revenue, before invoking Section 73(1) of the Finance Act, 1994, shall have to prove that there was wilful suppression of fact by the petitioner. After all, this provision cannot be applied just for any omission on the part of the petitioner unless it is a deliberate attempt to escape from payment of the Service Tax. For example, where the facts are known to both the parties, the omission by one to do what he might have done and not that he must have done, does not constitute suppression of fact. As held by the Apex Court in *Sarabhai M. Chemical (supra)*, there are two concepts which are required to be kept in mind for the purpose of deciding a case such as the one at hand. Reopening of approval/assessment is different from raising of demand in relation to the extended period of limitation. Under Section 73(1) of the Finance Act, a proper officer can reopen the approvals/assessments in cases of escapement of duty on account of non-levy, non-payment, short-levy, short-payment or erroneous refund, subject to it being done within one year from the relevant date. On the other hand, the demand for duty in relation to extended period is mentioned in the proviso to Section 73A(1). Under that proviso, in cases where excise duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded on account of fraud,

collusion or wilful misstatement or suppression of facts, or in contravention of any provision of the Act or Rules with the intent to evade payment of duty, demand can be made within five years from the relevant date. Viewed against the backdrop of the principles enunciated by the Apex Court in *Surabhai M. Chemicals (supra)*, we are of the firm view that the findings made by the respondent No. 3 suffer from the vice of non-application of mind. If we may say so, the respondent No. 3 does not appear to understand the difference between the scope and ambit of Section 73(1) and the proviso to Section 73(1) as evident from his findings at para 4.6 of his order, which reads as under :

"4.6 Regarding suppression of facts, I observe that the noticee have (sic) resorted to suppress the material facts from the department with intent to evade Service Tax. Had the Department not undertaken any investigation, the matter would have been in a dark corner and remained non-levy of tax. Moreover, although the said notice advanced various arguments against suppression of fact as mentioned above including the point that all the facts were within the knowledge of the department as regular returns were filed by them which indicating the payment of tax under the composite scheme, I have in opinion that mere submission of returns is not sufficient to avoid the ground reality that an assessee is free from resorting (to?) suppression/misstatement of actual fact. Hence, there are other machinery of other department like Audit and Anti-evasion to monitor such elements of evasion. I, therefore, find that the show cause notice was issued rightly by invoking an extended period of five years of suppression of facts. The extended period of limitation for recovery of Service Tax is invocable in terms of the proviso to Section 73(1) of the Finance Act, 1994 for the situation as discussed in the above show cause notice. Further, since Section 78 of the Finance Act, 1994 is a natural corollary to the proviso to Section 73(1) *ibid*, mandatory penalty under Section 78 *ibid* is liable to be imposed on the said assessee."

6. In our opinion, the respondent No. 3 did not record any findings regarding the allegation of the petitioner as to whether the burden of service tax was on the service receiver or whether the component of service tax paid by the service receiver was realized from the petitioner as service provider or whether the submissions of service tax returns regularly showing all the details and particulars are indicative of the fact that these facts are within the knowledge of the respondent authorities. These are vital facts which, if duly considered by the Respondent No. 3, would have enabled him to come to the correct conclusions. Since the proviso extends the period of limitation from six months to five years it has to be construed strictly. The initial burden is on the department to prove that the situations visualised by the proviso existed. But once the department is able to bring on record material to show that the appellant was guilty of any of those situations which are visualised by the section, the burden shifts and then applicability of the proviso has to be construed liberally. When the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more. That is, the assessee must be aware that the duty was leviable and it must deliberately avoid paying it. The word 'evade' in the context means defeating the provision of law of paying duty. It is made more stringent by use of the word 'intent'. In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law. Thus, where there was scope for doubt whether case for duty was made out or not the proviso to Section 11A of the Act would not be attracted."

58.7: Some more such decisions of Hon'ble Tribunal which categorically lay down the principle of law that extended period of limitation cannot be invoked in cases where the assesseees have filed their monthly returns with relevant information and which apply in this case with full force, are: *Federal Mogul TPR India Ltd. - 2016 (42) S.T.R. 724 (Tri. - Bang.)*; *Sunbell Alloys Co. of India Ltd. - 2013 (30) STR 211 (Tri.Mum)*; *Cambay Organics Pvt. Ltd. - 2007 (217) ELT 586 (Tri.Ahd)*; *Modi Steels Ltd. - 2001 (127) ELT 407 (Tri.Del)*; *Parul Associates Interiors Pvt. Ltd. reported in 2016 (46) STR 373 (Tri.Bang)*; *Zee Media*

Corporation Ltd. – 2018 (18) GSTL 32 (Allh); *Savira Industries cited at 2016 (331) ELT 504 (Tri Chennai)*; *Bhagwati Spherocast Pvt. Ltd. cited at 2019 (368) ELT 308 (Guj)*; and HMM Ltd. – 1995 (76) ELT 497 (SC). As already stated above, the periodical ST-3 returns filed by the said assessee scrupulously reveal the facts about their availing exemption on security services and manpower/labour supply and/or house-keeping services provided to the educational institutions, along with the number and serial number of the relevant notification under which they have availed such exemption, as well as the gross amount charged by them from their clients towards provision of such exempted services. Thus, I have no doubt that the ratio of the aforesaid decisions of the higher authorities is squarely applicable in the present case. Therefore, in the absence of mandatory ingredients mentioned under the proviso to Section 73(1) of the Act, I hold that the extended period of limitation cannot be invoked in the present case, and hence the demand on Rev. Point-1 is time-barred.

58.8. Meanwhile, I find from the ST-3 return for the QY April-June, 2017 that the same was filed on 02.08.2017 while the subject SCN was served to them on 18.10.2019. As per the proviso to Rule 7(2) of STR, 1994, the due date for filing return for this period is 15.08.2017 whereas they have filed the same on 02.08.2017. Thus, as per the provisions of Section 73(1) of the Act, 1994 the demand for the period QY April-June, 2017 of the FY 2017-18 is within the normal period of thirty months and could have been confirmed in terms of Section 73(2A) of the Act. However, since the alleged contraventions based on which this demand was worked out, is not sustainable on merits, as discussed earlier above, I drop the entire demand raised on this Rev.Para-1.

59.1. Now, coming to the issue covered under Rev.Para-2 regarding the wrong availment of exemption on the security services provided to Govt. hospitals, dispensaries, primary health centers, collectorates, municipalities, panchayats, etc., the SCN repeats the same aforesaid allegation that the assessee had willfully and wrongly claimed wrong benefit of exemption under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012; that they have willfully mis-stated and suppressed the material facts with intent to evade the payment of service tax; and that they had an intention to evade the payment of service tax. However, no evidences or instances have been shown as to how these vital elements exist. I find from Para-18 of the SCN which categorically states that the assessee had issued proper invoices and maintained records such as manual registers and invoice-wise details for the audit period, which they have submitted to the audit officers, all of which show that they had provided security services to various Government hospitals/dispensaries, and other units/panchayats and collectorates but not discharged service tax liability on such security services by claiming exemption under Notification No. 25/2012-ST dated 20.06.2012. As per the defence submission, the assessee had claimed such exemption under Notification No. 25/2012-ST on their belief that such services provided to Government, a local authority or a governmental

authorities are exempted. Sl. No. 25 of the said notification was inserted vide Notification No. 6/2014-ST dated 11.07.2014 which provides such exemption to the services provided to Govt. authorities. It is a fact on record, as explained in Para-58 above, that the assessee had been declaring in their periodical return filed for FYs 2014-15, 2015-16 and 2016-17 that they were availing exemption, besides declaring the quantum of value charged by them from their clients towards provision of such exempted services.

59.2. Since the assessee had claimed exemption under Notification No. 25/2012-ST dated 20.06.2012 as amended by Notification No. 6/2014-ST dated 11.07.2014 on both the issues covered under Rev. Points 1 and 2, and since details of availing such exemption along with notification number as well as the value of such exempted services are diligently declared in their periodical ST-3 returns filed for FYs 2014-15, 2015-16 and 2016-17, I find that the principles of law regarding invocation of extended period of limitation as discussed in the several judgments in Para-58 above, are squarely applicable to the present issue. Therefore, I hold that the extended period of limitation cannot be invoked in the present issue covered under Rev. Para-2 also.

59.3. Meanwhile, I find from the ST-3 return for the QY April-June, 2017 that the same was filed on 02.08.2017 while the subject SCN was served to them on 18.10.2019. As per the proviso to Rule 7(2) of STR, 1994, the due date for filing return for this period is 15.08.2017 whereas they have filed the same on 02.08.2017. Thus, as per the provisions of Section 73(1) of the Act, 1994 the demand for the period QY April-June, 2017 of the FY 2017-18 is within the normal period of thirty months and required to be confirmed in terms of Section 73(2A) of the Act. Since the allegations in the SCN regarding wrong avilment of exemption on this issue are upheld on merits, as discussed earlier above, the demand of Rs. 1,97,167/- involved in the period 2017-18 (Till June, 2017) as shown in the chart appearing at Para-18 of the SCN is required to be confirmed.

60.1. As regards Rev. Para-3, the SCN merely states in Para 34 that the assessee had suppressed the facts from the department with intent to evade payment of service tax regarding their provision of security services to government bodies/undertakings on which they were liable to discharge service tax on forward charge. However, it does not carry any discussion or evidences to substantiate these allegations of suppression or intent to evade payment of service tax. Meanwhile, I find from Para-26 and 30 of the SCN that the demand was worked out after reconciliation of the taxable value declared by the assessee in ST-3 returns vis-à-vis the registers and detailed excel worksheets submitted by them during the audit. It is stated, such reconciliation revealed that the assessee had provided security services on which they have discharged service tax liability under RCM under Notification No. 30/2012-ST dated 20.06.2012. Therefore, it is an admitted fact that the assessee had filed ST-3 returns on this

issue by declaring their tax liability under RCM. As per the defence submission, assessee had claimed such RCM under Notification No. 30/2012-ST as amended by Notification No. 7/2015-ST dated 01.03.2015 on their belief that such services provided to Govt. bodies/undertakings would attract levy under RCM. I have also examined each of the HY ST-3 return filed by the assessee for the FYs 2014-15, 2015-16 and 2016-17 and found that all these returns carry declarations that they are availing exemption and also declared the Notification No. 30/2012-ST and/or Notification No. 7/2015-ST for availing such exemption. They have also shown the value on which partial/full reverse charge mechanism is applicable, the value charged from their clients which stands exempted from payment of service and the amount of service tax payable on RCM basis, etc. When such substantial compliance by way of diligent declaration of relevant information has been made by the assessee in their periodical returns, I have no reason even to presume any suppression, misstatement or misdeclaration on their part with deliberate intent to evade payment of service tax.

60.2. Since the facts of the present issue covered under Rev. Para-3 are identical to the facts discussed above in respect of Rev. Paras 1 and 2, to the extent of filing periodical returns, declaring details of exemption benefits availed along with the number and details of notification under which such benefits were claimed, declaring the value charged from the clients towards both taxable and exempted services provided and the service tax payable/paid as per their self-assessment, etc., I find that the principles of law regarding invocation of extended period of limitation as discussed in the several judgments in Para-58 above, are also squarely applicable to the present issue. Therefore, I hold that the extended period of limitation cannot be invoked in the present issue covered under Rev. Para-3 also.

60.3. Meanwhile, as already stated above, the ST-3 return for the QY April-June, 2017 was filed by the assessee on 02.08.2017 against the due date of 15.08.2017. As per the provisions of Section 73(1) of the Act, 1994 the demand for the period QY April-June, 2017 of the FY 2017-18 is within the normal period of thirty months and required to be confirmed in terms of Section 73(2A) of the Act. Since the alleged contraventions regarding wrong availment of RCM based payment on this issue are upheld on merits, as discussed earlier above, the demand of Rs. 4,21,044/- involved in the period 2017-18 (Till June, 2017) as shown in the chart appearing at Para-30 of the SCN is required to be confirmed.

61. Although the SCN seeks to impose penalty under Section 78(1) of the Act, I hold that such penalty cannot be imposed as the necessary ingredients specified under the proviso to Section 73(1) do not exist in this case so as to prove any suppression, misstatement or misdeclaration by the assessee with intent to evade payment of service tax.

62. In view of the facts and evidences as discussed in the foregoing paras, I pass the following order: -

ORDER

(i) I allow the benefit of exemption to M/s. Elite Security Services, Ahmedabad under SI No. 9 of Notification No. 25/2012-ST dated 20.06.2012 on the security services and manpower supply services provided by them to residential schools, hostels and other private/Govt. schools and colleges as covered in Revenue Para-1 of the SCN dated 17.10.2019;

(ii) I disallow the benefit of exemption to M/s. Elite Security Services, Ahmedabad under Notification No. 25/2012-ST dated 20.06.2012 on security services provided by them to Govt hospitals, dispensaries, for road works, other units and to jilla panchayats and collectorates as covered in Revenue Para-2 of the SCN dated 17.10.2019;

(iii) I drop the demand of Rs. 2,17,69,841/- [*Rupees Two Crores Seventeen Lakhs Sixty Nine Thousand Eight Hundred Forty One only*] raised on M/s. Elite Security Services, Ahmedabad vide Revenue Para-1 of the subject SCN towards service tax leviable on security services and manpower supply services provided to educational institutions during the period from 2014-15 to 2017-18 (till June, 2017), on merits as well as being time-barred;

(iv) I confirm demand of service tax of Rs. 1,97,167/- [*Rupees One Lakh Ninety Seven Thousand One Hundred and Sixty Seven only*] from M/s. Elite Security Services, Ahmedabad leviable on the services provided to Govt hospitals, dispensaries, for road works, other units and to jilla panchayats and collectorates during the period April-June, 2017, raised under Revenue Para-2 of the said SCN, under Section 73(2A) of the Finance Act, 1994;

(v) I drop the demand of Rs. 1,22,00,191/- [*Rupees One Crore Twenty Two Lakhs One Hundred Ninety One only*] raised on M/s. Elite Security Services, Ahmedabad vide Revenue Para-2 of the SCN towards service tax leviable on security services and manpower supply services provided to Govt hospitals, dispensaries, for road works, other units and to jilla panchayats and collectorates during the period from 2014-15 to 2016-17, being time barred;

(vi) I confirm demand of service tax of Rs. 4,21,044/- [*Rupees Four Lakhs Twenty One Thousand and Forty Four only*] from M/s. Elite Security Services, Ahmedabad leviable on the services provided to Govt bodies/undertakings during the period April-June, 2017, raised under Revenue Para-3 of the said SCN, under Section 73(2A) of the Finance Act, 1994;

(vii) I drop the demand of Rs. 31,81,578/- [*Rupees Thirty One Lakhs Eighty One Thousand Five Hundred Seventy Eight only*] raised on M/s. Elite Security Services, Ahmedabad under Revenue Para-3 of the SCN towards service tax leviable on security services provided to Govt bodies/undertakings during the period from 2014-15 to 2016-17, being time-barred;

(viii) I order that interest at the appropriate rate shall be levied on the confirmed demand of Rs. 1,97,167/- as per Para (iv) and Rs. 4,21,044/- as per Para (vi) above, under Section 75 of the Finance Act, 1944;

(ix) I drop the proposal to impose penalty on M/s. Elite Security Services, Ahmedabad under Section 78(1) of the Finance Act, 1994; and

(x) SCN F. No. VI/1(b)/CTA/Tech-47/SCN/Elite/19-20 dated 17.10.2019 issued to M/s. Elite Security Services, Ahmedabad is accordingly disposed of.


(DR. BALBIR SINGH)

COMMISSIONER
CGST & CEX, AHMEDABAD NORTH

F.NO. STC/15-51/OA/2019
BY REGD POST AD

Date: 19.08.2020

To
M/s. Elite Security Services,
35/836, Gujarat Housing Board,
Meghaninagar, Civil Hospital,
Ahmedabad-380 016.

Copy to: -

1. The Principal Chief Commissioner, CGST & Central Excise Zone, Ahmedabad.
2. The Deputy/Assistant Commissioner of CGST & Central Excise, Division-Naroda, Ahmedabad-North, Ahmedabad
3. The Superintendent of CGST & Central Excise, Range-I, Division-Naroda, Ahmedabad-North, Ahmedabad
- ✓ 4. Guard file.

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